



**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
v.)
ADVANCED CHEMICAL TREATMENT)
INC., EPA ID # NMD002208627)
Respondents.)**

NO. HWB 19-23 (CO)

STIPULATED FINAL ORDER

The New Mexico Environment Department ("Department") and Advanced Chemical Treatment, Inc. ("Respondent") (collectively, the "Parties"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Administrative Compliance Order ("ACO") issued by the Department to the Respondent on May 24, 2019. The parties have agreed on the terms and conditions specified in this Stipulated Final Order ("Order").

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.

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2. The Respondent is a corporation headquartered at 1210 Elko Drive in Sunnyvale, California. Respondent is the operator of a business located at 6137 Edith Boulevard N.E., Albuquerque, New Mexico, hereafter referred to as the "Facility."
3. Respondent operates a for-profit corporation under a Treatment, Storage, and Disposal Facility ("TSDF") Permit, EPA ID. Number NMD002208627 ("Permit").
4. Respondent notified the Department on April 4, 2014 that the Facility is a large quantity generator of hazardous waste, a large quantity handler of universal waste, and a permitted hazardous waste treatment, storage and disposal facility.
5. Respondent is currently undergoing a renewal of the Hazardous Waste Permit for the Facility, which is a permit to store hazardous waste from off-site generators. The Facility was first permitted to store hazardous waste on January 8, 1988. A revised permit became effective on March 12, 2002 and it is this permit, with modifications, that is currently in effect. A permit renewal application was received by the Department on August 12, 2011 and the Department is currently processing this application.
6. Respondent is permitted to store a variety of hazardous wastes at the Facility. The Facility accepts and stores wastes generated off-site that have any of the listed EPA Waste Codes (*i.e.*, F001-F039, K001-K136, P001-P123 and U001-U249) and wastes that exhibit the characteristics of ignitability, corrosively, reactivity and toxicity (Waste Codes D001-D043).
7. On November 5, 2018, inspectors from the Department conducted a Compliance Evaluation Inspection ("Inspection") of the Facility. During the Inspection, the inspectors observed violations of the HWA, the HWMR, and the Permit.

8. As a result of the Inspection, documentation reviewed and information provided, the Department issued the ACO to the Respondent on May 24, 2019.

ALLEGED VIOLATIONS

9. The Department alleged the following violations in the May 24, 2019, ACO:

- a) Respondent's failure to store used oil less than 35 days as a Used Oil Transfer Facility is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(a).
- b) Respondent's failure to label containers, storing used oil, with the words "Used Oil" is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(g).
- c) Respondent's failure to respond to a release of used oil to the environment is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 297.45(h).
- d) Respondent's failure to make a hazardous waste determination is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.
- e) Respondent's failure to manage and store hazardous wastes containers, holding ignitable or reactive hazardous waste, at a distance greater than 15 meters (50 feet) of the Facility's property line is a violation of Permit Condition ("PC") III.J.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.176.
- f) Respondent's failure to manage and store hazardous waste only in seven rooms of the Container Storage Facility ("CSF") is a violation of PC I.B.6.
- g) Respondent's failure to store hazardous waste in the Container Storage Facility for less than one year is a violation of PC III.A.1.d.

h) Respondent's failure to label or mark containers for waste tracking is a violation of Permit Attachment D, Page 7 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2).

i) Respondent's failure to store containers in a manner that would prevent rupture or cause leaks is a violation of PC III.E and 20.4.1.500 NMAC, incorporating 40 CFR § 264.173(b).

j) Respondent's failure to store hazardous waste within the permitted maximum volume of 55,000 gallons is a violation of PC III.B.2.

k) Respondent's failure to properly post legible warning signs on the property boundary fence is a violation of PC II.D.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.14(c).

l) Respondent's failure to properly characterize waste through the submittal of the waste stream profiles to a qualified lab to perform a detailed chemical analysis when knowledge of process is not adequate for determination is a violation of PC II.C.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.13(a).

m) Respondent's failure to failure to maintain an accurate operating record is a violation of PC II.L.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73.

n) Respondent's failure to label universal waste batteries is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(a) and 20.4.1.1001.B NMAC.

COMPROMISE AND SETTLEMENT

10. As confirmed in a written submittal to the Department from the Respondent, all actions required to maintain or restore Respondent's compliance have been completed.

11. The Respondent does not admit to any of the allegations in the ACO. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Order to resolve the alleged violations in the ACO.

12. The Respondent admits to the jurisdictional allegations of this Order and consents to the relief specified in the Order including the civil penalty.

13. Based upon information provided by the Respondent, and in compromise and settlement of the alleged violations in the ACO, the Parties agree that the civil penalty shall be reduced to \$360,285.00, which shall be paid in a lump sum or, upon request by the Respondent, by monthly payments of \$15,000.00 for 23 consecutive months and a 24th month payment of \$15,285.00. Monthly payments will be due on the first day of each month. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico-Hazardous Waste Emergency Fund", and shall be sent to the Department at the following address:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building I
Santa Fe, New Mexico 87505

14. Payment of the civil penalty shall be accompanied by a transmittal letter referencing this Order. If Respondent fails to make a monthly payment as described in paragraph 13, the total original reduced penalty of \$360,285.00, less payments already made, shall become due upon the tenth of that month.

15. If Respondent fails to make timely and complete payment of the civil penalty as described in paragraph 14, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

16. Except as provided in Paragraph 20 (Covenants Not To Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, and HWMR for any past, present or future violation not addressed in the ACO. In any such action, the Respondent reserves the right to assert any defenses that they may have.

17. The Department retains its right to enforce this Order by administrative or judicial action, and the Respondent reserves the right to assert any defenses that they may have.

18. In the event that, the Department elects to file a judicial action to enforce this Order, the Parties agree that the First Judicial District Court of Santa Fe County, New Mexico shall have exclusive jurisdiction over the Parties and the Order. The Parties agree to waive any right to challenge that jurisdiction or venue which lies with the First Judicial District Court of Santa Fe County, New Mexico.

19. The laws of the State of New Mexico shall govern the construction and interpretation of this Order.

COVENANTS NOT TO SUE

20. The Department covenants not to sue or take any administrative or civil action against the Respondent under the HWA, and HWMR for any of the facts or violations alleged in the ACO or this Order. This covenant not to sue extends to the Respondent and its successor agencies and its respective officers, agents, successors, and assigns, and does not extend to any other person. This Covenant does not extend to future violations of the same permit conditions or the Code of Federal Regulations requirements.

21. Respondent covenants not to sue the State of New Mexico for any claims deriving from the ACO.

EFFECTIVE DATE

22. This Order shall become effective on the date it is approved and signed by the Department Secretary.

INTEGRATION

23. This Order merges all prior written and oral communications between the Parties concerning the subject matter of the Order and contains the entire agreement between the Parties.

BINDING EFFECT

24. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondent and on its successors.

AUTHORITY OF SIGNATORIES

25. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondent, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondent to this Order.

For the **NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
STEPHANIE STRINGER
DIRECTOR
RESOURCE PROTECTION DIVISION

Date: 10/15/19

For **ADVANCE CHEMICAL TREATMENT INC.**

By: 
BOB SORENSON
GENERAL MANAGER
ADVANCE CHEMICAL TREATMENT INC.

Date: 10/21/19


CEO
ADVANCED Chemical Treatment INC.

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.15.600.B(2) NMAC, this Order, agreed to by the Parties, is hereby APPROVED as a FINAL ORDER.



JAMES KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

Date: 10 | 17 | 2014