OhioEPA

State of Ohio Environmental Protection Agency

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June 14, 2007

ROSS COUNTY
ROCAL INC.
DHWM/SEDO
OHD990780777
OHD981153601

Mr. William B. Shaklee
Squire, Sanders and Dempsey LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1304

Dear Mr. Shaklee:

On December 15, 2006, Ohio EPA sent you a Notice of Violation letter for Rocal's two facilities, identified respectively as OHD990780777 (old plant) and OHD981531601 (new plant). A response, dated March 9, 2007, was received by Ohio EPA.

Rocal new/second facility (~~OHD981531601~~ OH0990780777)

The documentation you submitted on March 9, 2007 included a revised contingency plan dated March 8, 2007, manifest #03235, an inspection checklist for the wastewater collection area, a LDR notification, and information on floor sealant.

My review of this documentation reveals that Rocal has adequately demonstrated abatement of the following violations discovered during the June 13, 2006 inspection:

(1) OAC Rule 3745-52-31, Labeling;
(2) OAC Rule 3745-52-32 (A), Marking;
(3) OAC Rule 3745-52-33, Placarding;
(4) OAC Rule 3745-52-30, Packaging;
(5) OAC Rule 3745-65-37, Arrangements with Local Authorities;
(6) OAC Rule 3745-52-34 (A), Accumulation Time of Hazardous Waste;
(7) OAC Rule 3745-66-74, Inspections;
(8) OAC Rule 3745-65-31, Operation and Maintenance of Facility;
(9) OAC Rule 3745-65-51, Purpose and Implementation of Contingency Plan; and
(10) OAC Rule 3745-65-54, Amendment of Contingency Plan.

However, Rocal remains in violation of the following hazardous waste laws:

(11) **ORC 3734.02(F), Prohibitions**: No person shall store, treat, or dispose of hazardous waste, or transport or cause to be transported any hazardous waste except to or at a permitted hazardous waste facility.

Rocal caused hazardous waste to be transported from its point of generation at the new/second Rocal plant, to the old/first Rocal plant, which is not a permitted hazardous waste facility. No specific actions are required to abate this violation at this time. The violation will be resolved via enforcement action.

(12) **OAC Rule 3745-52-11, Waste Evaluation**: Any person who generates a waste must evaluate the waste to determine if the waste is a hazardous waste by first determining if it is an excluded waste, a listed waste or a characteristic waste.

Rocal failed to adequately evaluate their waste from the chromate conversion process at the new/second facility. Rocal used the F019 waste code for D002/D007 waste generated at the new/second plant that was subsequently manifested offsite from the old/first plant. F019 is defined in OAC Rule 3745-51-31 as "wastewater treatment sludges from the chemical conversion coating of aluminum..." Waste generated from the new plant's chromate conversion process does not fit this description, since the process itself is not a wastewater treatment system. Therefore, this waste code does not apply to the waste stream.

In an attempt to document a return to compliance, a hazardous waste manifest was submitted as Attachment B in the March 9, 2007 NOV response from Mr. Shaklee. This manifest is for waste ink, which is not the waste in question which is waste from the chromate conversion process. Therefore, the manifest is not adequate documentation. As Rocal has stated, that they are no longer generating hazardous waste from the chromate conversion process at the new/second facility, no specific actions are required to abate this violation at this time. The violation will be resolved via enforcement action.

(13) **OAC Rule 3745-65-52 (C), Content of Contingency Plan**: The contingency plan must describe actions facility personnel must take in response to fires, explosions or releases of hazardous waste, including arrangements agreed to by local emergency authorities;

Rocal has submitted a contingency plan that applies to their new/second facility. However, the new plan fails to include arrangements/ agreements made with local emergency authorities, if any, pursuant to OAC Rule 3745-65-37. While the March 9, 2007 letter from Bill Shaklee described such arrangements, the contingency plan fails to include them.

Rocal must revise the plan to include the above information and provide a copy to this office for review. Rocal must also submit the plan to local authorities as required by OAC Rule 3745-65-53 and document to this office that this has been done.

In addition, Ohio EPA will note for the record that on August 4, 2006, Ohio EPA was transmitted a contingency plan that failed to contain Figures 1 and 2 attached behind the Figure 1 and 2 pages. The August 4, 2006 contingency plan, with Figures 1 and 2 missing, is available for your review, if necessary.

(14) ***OAC Rule 3745-270-07 (A), Testing, Tracking and Recordkeeping Requirements For Generators, Treaters and Disposal Facilities:*** The generator must determine if hazardous waste has to be treated before it can be land disposed. The generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the generator's files. The notice must include certain required information. Waste analysis data supporting this determination must be kept in the generator's file.

Rocal failed to determine if waste generated at the new/second plant required treatment prior to land disposal. Rocal failed to send a written one-time notice to the receiving facility and failed to retain supporting data and LDR certifications at the site in which the waste was generated.

In order to abate the violation, Ohio EPA requested that Rocal submit an LDR form in its March 9, 2007 NOV response. An LDR form was submitted in the March 9, 2007 response, however, this LDR form was for waste ink rather than for hazardous waste D002/D007 from the chromate conversion process. Please submit a legible copy of an LDR form for waste from the chromate conversion process that was manifested offsite from the new/second plant after June 30, 2006 but prior to the chromate conversion system becoming a "closed conveyor system" as stated by Mr. Shaklee in the March 9, 2007 NOV response. Please also provide the date that this system became a closed conveyor system.

(15) **OAC Rule 3745-270-09(A), Special Rules Regarding Wastes That Exhibit a Characteristic:** The initial generator of a waste must determine each EPA hazardous waste code applicable to the waste. In addition, the generator must determine underlying hazardous constituents in the characteristic waste.

Rocal failed to determine this information for waste generated from the chromate conversion process at their facility, since waste was not sent offsite with LDR forms. Per Ohio EPA's request, Rocal submitted an LDR form in its March 9, 2007 NOV response. However, this LDR form was for waste ink rather than for hazardous waste D002/D007 from the chromate conversion process. Please submit a legible copy of an LDR form for waste from the chromate conversion process that was sent offsite after June 30, 2006 but prior to the chromate conversion process becoming a "closed conveyor system" so that Ohio EPA can evaluate compliance with the above-cited regulation.

In addition to the above, Rocal has violated the following regulation of the OAC. Note that this will be abated once the above violations have been abated.

(16) OAC Rule 3745- 65-53, Copies of Contingency Plan;

Rocal old/first facility (OHD9~~90780777~~ 815316 01)

The documentation you submitted to this office on March 9, 2007, failed to address the following violations cited for Rocal's old/first facility.

(17) **ORC 3734.02 (E) (F), Prohibitions:** (E) No person shall establish or operate a hazardous waste facility without a hazardous waste operating permit.

From January 1 to June 15, 2006, approximately 29,500 gallons of off-site hazardous waste D002/D007 was accepted and placed in a tank at the old/first Rocal facility. This waste was generated off-site in the chromate conversion system at Rocal's new/second location, and then transported in 350-gallon totes by Fed Ex to the old/first Rocal facility. Waste was then manifested offsite to Heritage Environmental. This activity constitutes the establishment and operation of an unpermitted hazardous waste facility at the old/first Rocal.

(F) No person shall store, treat, or dispose of hazardous waste, or transport or cause to be transported any hazardous waste except to or at a permitted hazardous waste facility.

Unpermitted storage of hazardous waste occurred at the old/first Rocal facility between January 1, 2006, and June 15, 2006, when offsite waste was accepted at and stored there prior to manifesting it off-site. Although storage occurred for less than ninety days, the fact that offsite hazardous waste entered the facility causes the plant to become a hazardous waste storage facility.

No specific actions are required to abate this violation at this time. The violation will be resolved via enforcement action.

(18) **OAC Rule 3745-52-11, Waste Evaluation**: Any person who generates a waste must evaluate the waste to determine if the waste is a hazardous waste by first determining if it is an excluded waste, a listed waste or a characteristic waste.

Rocal failed to adequately evaluate waste from the chromate conversion process at the old/first facility. The F019 waste code, which Rocal has assigned to this waste stream, is not the appropriate waste code. F019 is defined in OAC Rule 3745-51-31 as "wastewater treatment sludges from the chemical conversion coating of aluminum..." Waste generated from the old plant's chromate conversion process does not fit this description, since the process itself is not a wastewater treatment system. Therefore, this waste code does not apply to the waste stream.

To document compliance with this rule, a manifest was submitted as Attachment B in the March 9, 2007 letter. Because this manifest is for waste ink rather than for waste from the chromate conversion process at the old/first facility, this manifest is not adequate documentation. Furthermore, a waste evaluation was submitted as Attachment E in the March 9, 2007 NOV response. This evaluation was for waste generated by the new/second facility. As the above-cited violation is for waste generated by the old/first facility, this waste evaluation is not adequate documentation. A separate waste evaluation must be conducted for each system. Therefore, this violation will remain outstanding until Rocal conducts an adequate waste evaluation on waste generated from the chromate conversion process at the old/first plant.

(19) **OAC Rule 3745-65-31, Operation and Maintenance of Facility**: Facilities must be maintained and operated to minimize the possibility of a fire, explosion or release of hazardous waste.

The old/first Rocal facility is not operated to minimize the possibility of fire, explosion or release of hazardous waste, because it is operating a hazardous waste tank without following all applicable hazardous waste tank regulations, including secondary containment and daily tank inspections. This will remain an outstanding violation until Rocal abates all tank violations and conducts closure of the tank as described below.

(20) **OAC Rule 3745-270-07 (A), Testing, Tracking and Recordkeeping Requirements For Generators, Treaters and Disposal Facilities**: The generator must determine if hazardous waste must be treated before it can be land disposed. Land disposal restriction (LDR) forms must include all applicable waste codes.

Because Rocal failed to properly identify waste codes applicable to waste episodically generated from the chromate conversion process at the old/first plant, Rocal failed to include required information on it's LDR forms, including all applicable waste codes. Because Rocal has stated that they have not manifested waste offsite from the old/first plant since July 5, 2006, the date of the first NOV letter after the June 13, 2006 inspection, no specific actions are required to abate this violation at this time. The violation will be resolved via enforcement action.

(21) **OAC Rule 3745-270-09(A), Special Rules Regarding Wastes That Exhibit a Characteristic**: The initial generator of a waste must determine each EPA hazardous waste code applicable to the waste.

Rocal failed to accurately identify this information for waste episodically generated from the chromate conversion process at the old plant. Because Rocal has stated that they have not manifested waste offsite from the old/first plant since July 5, 2006, the date of the first NOV letter after the June 13, 2006 inspection, no specific actions are required to abate this violation at this time. The violation will be resolved via enforcement action.

(22) **OAC Rule 3745-66-91, Assessment of Existing Tank System's Integrity**: For existing tank systems that don't have secondary containment meeting the requirements of OAC Rule 3745-66-93, the owner/operator must determine that the tank system is not leaking or unfit for use. The assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste to be stored to ensure that it will not fail. A written tank assessment by an independent, registered professional engineer must be kept on file.

Mr. Shaklee states in the March 9, 2006 NOV response that, "the agency has not requested any information to determine whether in fact the tanks at the First Rocal Facility have secondary containment. The notices of violation simply presume that from the inspector's visual observations, no secondary containment exists at the First Rocal Facility."

In fact, Ohio EPA discussed this tank with Rocal staff both during the June 13, 2006 inspection and in three follow up telephone conversations with Mr. Tom Baldwin and Mr. Robert Leitle, owner of Rocal, which took place on June 19, 28 and 29, 2006. During these four conversations, Ohio EPA was told by Mr. Baldwin that the tank did not have secondary containment, and that an assessment had not been done. In addition, Mr. Leitle stated that this tank was not stainless steel, as the other five dip tanks are, and "could not be used for chromium waste since it would corrode." Based on these conversations, as well as information contained in Ohio EPA files, Ohio EPA confirmed that, at the time of the inspection, this tank was being operated as a storage tank for chromium- bearing hazardous waste which was illegally transported in totes, and then transferred from totes into the tank, where it was stored until manifested offsite. This usage is distinctly different from the tank's original intended purpose in 1991 as an "emergency back-up if problems existed" as stated by Mr. Shaklee in the March 9, 2006 NOV response.

A contingency plan from 1991, as cited by Mr.Shaklee, is not sufficient evidence to document the adequacy of the secondary containment of this tank. In order to abate the above-cited violation, if Rocal wishes to now prove that this tank meets the secondary containment requirements of OAC 3745-66-93, Rocal must document the age of the tank and specify in detail how the secondary containment is: (1) designed, installed and operated to prevent migration of wastes from the tank system; and (2) Capable of detecting and collecting accumulated liquids until the collected material is removed. To meet these requirements the secondary containment must be, at a minimum: (1) constructed of or lined with materials that are compatible with the waste placed in the tank system, and of sufficient strength and thickness to prevent failure; (2) placed on a foundation or base capable of providing support and resistance; (3) provided with a leak detection system that is designed and operated so it will detect the failure of either the primary or secondary containment system within 24 hours; and (4) sloped or designed or operated to drain and remove liquids resulting from leaks, spills or precipitation. Note that additional requirements for tanks and secondary containmeent are specified in

section (D) of OAC 3745-66-93. Once submitted, Ohio EPA can evaluate this information for compliance.

Rocal will remain in violation of this rule until it documents that the tank meets secondary containment regulations or until it either installs secondary containment that meets this rule and conducts a tank assessment, or ceases using the tank for hazardous waste storage. Please submit a description of how Rocal will meet the requirements of this rule.

(23) **OAC Rule 3745-66-93 (I), Containment and Detection of Releases**: All tank systems without secondary containment must comply with the requirement for an annual leak test, internal inspection or tank integrity test conducted by an independent, registered professional engineer. The results of this test must be maintained on file at the facility.

Rocal failed to conduct the annual tank test required of this rule. In order to abate this violation, Rocal must either conduct the tank test or cease using the tank for hazardous waste storage. Please submit a description of how Rocal will meet the requirements of this rule.

(27) **OAC Rule 3745-66-94, General Operating Requirements**: Hazardous wastes shall not be placed in a tank system if they could cause the tank or ancillary equipment to rupture, leak, corrode or otherwise fail. The owner/operator shall use appropriate controls and practices to prevent spills and overflows. At a minimum, these include spill prevention controls (such as check valves and dry disconnect couplings), overfill prevention controls (such as level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standing tank), and maintenance of sufficient freeboard.

Rocal managed a corrosive, chromium-bearing waste (D002/D007) in a steel tank, subjecting the tank to risk of corrosion. In order to abate this violation, Rocal must either conduct the tank assessment per OAC 3745-66-91 in order to determine if the tank is capable of withstanding this waste, or cease using the tank for hazardous waste storage. Please submit a description of how Rocal will meet the requirements of this rule.

(28) **OAC Rule 3745-66-95, Inspections**: The owner/operator must inspect the tank system once per day and record inspections in an operating log. Inspections must include the overfill/spill control system, aboveground portions of the tank, data gathered from monitoring and leak detection equipment, and construction materials and the area immediately surrounding the externally accessible portion of the tank system, including secondary containment structures.

Rocal failed to conduct and record daily tank inspections per this rule. In order to abate this violation, Rocal must either begin to conduct daily inspections or cease using the tank for hazardous waste storage. Please submit a description of how Rocal will meet the requirements of this rule.

(29) **OAC Rule 3745-66-12, Closure Plan, Amendment of Plan**: The owner/operator of a hazardous waste management facility must have a written closure plan that meets the requirements of OAC Rules 3745-66-12 though 3745-66-20.

Rocal failed to have a written closure plan for the hazardous waste tank. Rocal must submit to the Director of Ohio EPA for approval a written closure plan for the hazardous waste tank. Once the closure plan is approved by Ohio EPA, you must close the tank in accordance with the above requirements and the approved closure plan.

In addition to the above, Rocal has violated the following rules of the OAC:

(30) OAC Rule 3745-65-14, Security;
(31) OAC Rule 3745-65-15, Inspection Requirements;
(32) OAC Rule 3745-65-13, General Waste Analysis, Waste Analysis Plan;
(33) OAC Rule 3745-65-73, Operating Record;
(34) OAC Rule 3745-66-100, Waste Analysis and Trial Tests.

GENERAL COMMENTS

(a) Since Rocal violated ORC 3734.02(E) and (F), Rocal's plants are subject to all applicable general facility standards found in OAC chapters 3745-54 and 55. Additionally, at any time, Ohio EPA may assert its right to have Rocal begin facility-wide cleanup pursuant to the Corrective Action process under Ohio law.

(b) Because Rocal will be subject to closure of the hazardous waste tank at it's old plant, Rocal is subject to the applicable financial assurance and liability requirements of OAC Rule 3745-66-42 through -47. Documentation of compliance with these requirements can be submitted to the Compliance Assurance Section of the Division of Hazardous Waste at Ohio EPA, with a copy sent to Donna Goodman at the Southeast District Office of Ohio EPA.

(c) As we discussed during the inspection, Rocal's old/first plant will be subject to Cessation of Regulated Operations (CRO) regulations as found in OAC Chapter 3745-352 due to the impending shutdown of the one remaining operation at that facility, the chromate conversion process. During the inspection on June 28, 2005, Rocal was provided with a copy of the CRO manual and appropriate forms which must be submitted. In addition, these requirements were discussed with Rocal during the inspection on June 13, 2006. Mr. Tom Baldwin has repeatedly told Ohio EPA that the shutdown would be occurring. To date, Ohio EPA has not been notified of a shutdown, and it now appears that Rocal intends to continue operating the old/first plant. **Please submit a description of how Rocal continues to operate the old/first location and if CRO is to occur, the estimated timing of that.**

Please submit all requested information **within 15 days** of the date of this letter demonstrating that all violations have been abated. Should you have any questions, please feel free to call Fran Kovac at (614) 644-3037.

Sincerely,

Donna Goodman
District Representative
Division of Hazardous Waste Management

DG/mlm

cc: Francis Kovac, CO/Legal
Ike Wilder, CO/DHWM

NOTICE:
Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.