

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 C 830
	)	
BEAVER OIL COMPANY, INC.,	)	Judge Kim
	)	
Defendant.	)	

**AMENDED COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General of the United States, and through its undersigned attorneys, acting at the request of the United States Environmental Protection Agency (“EPA”), alleges:

**Nature of Action**

1. This is a civil action under Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), and Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6928(a) and (g), for violations of: (a) Section 307 of the CWA, 33 U.S.C. § 1317; (b) applicable regulations promulgated thereunder and codified at 40 C.F.R. Parts 403 and 437; (c) an administrative order that EPA issued to Beaver Oil Co., Inc. (“Beaver”) pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319; (d) federally-enforceable requirements established by the Metropolitan Water Reclamation District of Greater Chicago (“the District”) in a sewer user ordinance and in a Discharge Authorization that the District issued to Beaver; (e) Section 3008(a) and (g) of (“RCRA”), 42 U.S.C. § 6928(a) and (g); (f) applicable regulations

promulgated thereunder and codified at Title 35 Illinois Administrative Code (IAC), Parts 700-739 [40 C.F.R. Parts 260-279]; and (g) Beaver's RCRA operating permit. All of the violations referred to above relate to Beaver's used oil recycling and hazardous waste treatment and storage facility in Hodgkins, Illinois (the "Facility").

### **Jurisdiction and Venue**

2. This Court has jurisdiction over the subject matter of this action pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a) and 33 U.S.C. § 1319(b), and 42 U.S.C. § 6928(a)(1), because this is the judicial district where Beaver does business, where the Facility is located, and where the alleged violations occurred.

### **Notice**

4. Notice of the commencement of this action has been given to the State of Illinois as required by CWA Section 309(b), 33 U.S.C. § 1319(b), and by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### **The Parties**

5. Plaintiff is the United States of America. Defendant Beaver is a corporation organized and qualified to do business in the State of Illinois. At all times relevant to this complaint, Beaver has been a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5), and RCRA Section 1004(15), 42 U.S.C. § 6903(15). Beaver is also a source of an "Indirect Discharge" of non-domestic wastewater and pollutants to a publicly owned treatment works ("POTW") operated by the District, within the meaning of 40 C.F.R. § 403.3(g), and is a "Significant Industrial User" of the District's POTW within the meaning of 40 C.F.R. § 403.3(t).

A part of Beaver's Facility treats and stores hazardous waste, and thus under RCRA, Beaver operates a "Hazardous Waste Management Facility" within the meaning of 40 C.F.R. § 270.2. Beaver also generates hazardous wastes at its Facility and thus under RCRA, is a "Generator" within the meaning of 40 C.F.R. § 260.10.

### **Beaver's Facility**

6. Beaver is one of the larger hazardous waste treatment and recycling companies in the Midwest, and operates processing plants in Hodgkins, Illinois, and Gary, Indiana.

7. At its Hodgkins Facility, Beaver typically receives approximately 28 million gallons of liquid waste annually. The Facility receives multiple liquid waste streams, including both non-hazardous and hazardous waste streams, from off-site sources. Non-hazardous waste streams received at the Facility include oily wastes, soaps, cosmetics, latex paint, inks, and many other contaminated liquids. Hazardous waste streams constitute approximately 5% of the total waste received at Beaver's Hodgkins Facility. If the hazardous waste load contains oil, it is sent to tank T-5, where it is heated, and the hazardous waste material is separated into three phases: water (pumped to wastewater treatment), oily waste, and overhead distillates. The oily waste phase and the overhead distillate phase are sent to the F-Tanks where they are mixed with used oil and marketed as a product to be burned as fuel.

8. In the process of treating the incoming waste streams, Beaver generates wastewater that contains "pollutants" as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6). Beaver discharges approximately 105,000 gallons per day of such wastewater into the sewer system, which is part of the POTW operated by the District. Beaver's wastewater discharges flow through the sewer system to the District's Stickney treatment plant, which is also part of the District's POTW. The Stickney treatment plant discharges treated wastewater into the

Chicago Sanitary and Ship Canal, a navigable water of the United States. Beaver's discharges of wastewater through the District sewer system are required to comply with applicable pretreatment requirements as outlined below.

## **I. The Clean Water Act**

### **A. Statutory and Regulatory Background**

9. Congress passed the CWA in order "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. To that end, the CWA prohibits the discharge of pollutants into the navigable waters of the United States, except those discharges that are in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342. *See* 33 U.S.C. § 1311(a).

10. Discharges from the District's Stickney treatment plant to the Chicago Sanitary and Shipping Canal are regulated under and subject to a National Pollutant Discharge Elimination System ("NPDES") permit issued by the Illinois Environmental Protection Agency ("IEPA") pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). As required by CWA Section 402(b)(8), 33 U.S.C. § 1342(b)(8), that permit includes, *inter alia*, conditions requiring identification of any significant source introducing pollutants subject to pretreatment standards under 33 U.S.C. § 1317(b) and a program to ensure compliance with pretreatment standards by each such source.

11. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations governing the introduction of pollutants into POTWs. Such regulations include General Pretreatment Standards for Existing and New Sources of Pollution, codified at 40 C.F.R. Part 403 ("General Pretreatment Standards"), as well as various pretreatment standards applicable to specific industrial categories ("Categorical Pretreatment Standards"). Categorical

Pretreatment Standards applicable to the Centralized Waste Treatment (“CWT”) Facilities industrial category are codified at 40 C.F.R. Part 437. Section 307(d) of the CWA prohibits the owner or operator of any source from operating the source in violation of any effluent standard or prohibition or treatment standard promulgated under Section 307 of the CWA, 33 U.S.C. § 1317.

12. The General Pretreatment Standards include general wastewater discharge restrictions, as well as sampling, monitoring, and record-keeping requirements, that are applicable to industrial users (such as Beaver) who discharge pollutants to POTWs. 40 C.F.R. §§ 403.5 and 403.12. The General Pretreatment Standards also require certain POTWs (including the District) to develop POTW Pretreatment Programs that control, through permits, orders, or other means, the contribution of each Industrial User to the POTW to ensure compliance with applicable Pretreatment Standards and Requirements. 40 C.F.R. § 403.8(a) and (f). Such POTW Pretreatment Programs must provide for issuance of permits or equivalent individual control mechanisms issued to each Significant Industrial User. Individual control mechanisms in POTW Pretreatment Programs are required to include effluent limits based upon the General Pretreatment Standards and applicable Categorical Pretreatment Standards, as well as self-monitoring, sampling, reporting, notification and record keeping requirements. 40 C.F.R. § 403.8(f)(iii).

13. As required by 40 C.F.R. §§ 403.5(c) and 403.8, the District established a pretreatment program, including the District’s Sewer Use Ordinance, which regulates the concentrations of pollutants that may be introduced into the District’s sewer system and which requires significant industrial users (like Beaver) to obtain and comply with all terms and conditions of a current and valid Discharge Authorization (“DA”) issued by the District.

Pursuant to 33 U.S.C. §1342(b)(8), EPA approved the District's pretreatment program on November 18, 1985.

14. The Sewer Use Ordinance and Beaver's DA are part of an EPA-approved pretreatment program and thus federally-enforceable pursuant to 33 U.S.C. § 1319(d).

15. The Sewer Use Ordinance and DAs issued by the District also contain local limits designed to enable the District to comply with its own NPDES permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and these local limits are federally enforceable Pretreatment Standards pursuant to 40 C.F.R. § 403.5(d).

16. Beaver's Facility is a CWT facility, which EPA regulations define as "any facility that treats (for disposal, recycling or recovery of material) any hazardous or non-hazardous industrial wastes, hazardous or non-hazardous industrial wastewater, and/or used material received from off-site." 40 C.F.R. § 437.2 (c).

17. As a CWT facility, Beaver is required to comply with the General Pretreatment Standards set forth at 40 C.F.R. Part 403; with the Categorical Pretreatment Standards set forth at 40 C.F.R. Part 437; and with the District's pretreatment program.

18. The CWT regulations at 40 C.F.R. Part 437 establish pretreatment standards for metal bearing wastes, oily wastes, and organic wastes. Definitions of these three waste categories are set forth at 40 C.F.R. § 437.2.

19. If a CWT facility accepts more than one of the CWT waste categories referred to above, it must monitor compliance for each category before mixing the treated waste of one category with wastes of any other category. Alternatively, a facility may monitor for compliance after mixing the wastes, but only if it certifies and demonstrates that it provides "equivalent treatment," *i.e.*, that its wastewater treatment system achieves "comparable pollutant removals"

to the applicable treatment technology selected as the basis for each category's limitations and pretreatment standards. 40 C.F.R. §§ 437.2(h) and 437.4.

20. The pretreatment regulatory scheme is administered by the local control authority, in this case, the District. A facility which elects (as did Beaver) to monitor for compliance after mixing its wastes is required to submit to the control authority an "Initial Certification Statement," that (1) lists and describes the subcategories of wastes accepted for treatment at the facility; (2) details the treatment systems in-place; and (3) provides information and supporting data to establish that these treatment systems will achieve "equivalent treatment." 40 C.F.R. §§ 437.41(a) and 437.46 (a). The facility may demonstrate "comparable removals" through "literature, treatability tests, or self-monitoring data." 40 C.F.R. § 437.2(h).

#### **B. Beaver's Discharge Authorization, the CWT Regulations, and Violations**

21. In May 2003, Beaver submitted to the District a request for authorization to discharge to the District's sewer system, but the request did not fully describe the Facility operations and did not specify the subcategories of wastes that Beaver would treat; the District declined to process the application and returned it to Beaver.

22. In October 2003, Beaver resubmitted its request for authorization to discharge along with an initial certification statement, and certified that the wastes that the Facility accepts for treatment are only in the (1) oil and (2) organics subcategories.

23. Although Beaver monitored for effluent compliance after mixing the waste streams, Beaver's initial certification statement did not provide complete information and supporting data as required by 40 C.F.R. §§ 437.41(a) and 437.46 (a) to establish that the treatment systems at the Facility were achieving "equivalent treatment."

24. Despite this omission, the District issued Beaver a DA to discharge wastewater into the District sewer system, incorporating the categorical standards for mixed waste streams from the oil and organics subcategories of the CWT regulations, *i.e.*, the two subcategories that Beaver certified it was accepting. *See* 40 C.F.R. § 437.46(e). The District first issued a temporary DA and then reissued the DA in September 2005 for a five-year term, to expire in September 2010.

25. Special Condition 3 of Beaver's DA in effect during the period December 2003 to December 2010 ("Initial DA") requires compliance with specific effluent limitations set out in the Initial DA, applicable to facilities only accepting oil and organic wastes.

26. Special Condition 7 of Beaver's Initial DA expressly prohibited Beaver from accepting for treatment or discharging any metal-bearing wastestream wastewaters.

27. Special Condition 6 of Beaver's Initial DA required Beaver to maintain records identifying the following information regarding each waste stream or load received for treatment or storage and to report it monthly to the District:

1. Name address and telephone number of generator;
2. Generator's type of business, USEPA industrial category and Standard Industrial Classification (SIC) code;
3. Type of waste;
4. Quantity of waste received each month in gallons or pounds;
5. Waste constituents, by chemical compound name as defined by the priority pollutant list and the Resource Conservation and Recovery Act hazardous waste list (40 C.F.R. Part 261);
6. Concentration ranges of waste constituents; and
7. IEPA Permit Number and name of permittee under which each waste load was accepted.

28. The District modified this record-keeping and reporting requirement on December 10, 2008, to require the following information:

1. Generator name and address;
2. Generator's type of business and pretreatment category, if applicable;
3. Volume, in gallons;
4. Waste stream classification based on Table XIII.A-1 from 40 C.F.R. Part 437; and
5. List of the waste constituents, specifically to include concentration ranges for oil and greases, cadmium, total chromium, copper and nickel, if applicable based upon current reference profiles for the wastestream or load.

29. Beaver was also required by 40 C.F.R. § 437.41(c), in support of its Initial and Periodic Certification Statements, to maintain "On-site Compliance Paperwork," including the following information:

1. List and describe the subcategory wastes being accepted for treatment at the facility;
2. List and describe the treatment systems in-place at the facility, modifications to the treatment systems and the conditions under which the systems are operated for the subcategories of wastes accepted for treatment at the facility;
3. Provide information and supporting data establishing that these treatment systems will achieve equivalent treatment;
4. Describe the procedures it follows to ensure that its treatment systems are well-operated and maintained; and
5. Explain why the procedures it has adopted will ensure its treatment systems are well-operated and maintained.

30. Although its Initial DA expressly prohibited Beaver from accepting metal-bearing waste streams, Beaver nevertheless accepted for treatment metal-bearing waste, as defined in 40 C.F.R. § 437.2(l), and discharged the metal-bearing wastestream wastewaters into the District's sewer system in violation of Special Condition 7 of the Initial DA.

31. Over the following years, Beaver failed to maintain complete records about the nature and makeup of its incoming waste streams required by Special Condition 6 of its Initial DA and 40 C.F.R. § 437.41(c).

32. Beaver also failed to include all the information required by Special Condition 6 of its Initial DA in its monthly influent wastestream reports to the District.

33. Beaver's failure to maintain and report complete and accurate information about the nature and makeup of the incoming wastestreams frequently makes it difficult to ascertain the appropriate wastestream categorization.

34. Over the following years, Beaver failed to maintain, as required by 40 C.F.R. § 437.41(c), "On-site Compliance Paperwork" about the treatment systems in-place at the facility, modifications to the treatment systems, and the conditions under which the systems were operated for the subcategories of wastes accepted for treatment at the facility, and failed to describe the procedures it followed to ensure that its treatment systems are well-operated and maintained. In particular, Beaver never kept records on its use of a hazardous waste, D002, in place of commercial treatment products for treatment of its non-hazardous waste streams. Beaver's records do not show the volume of D002 it uses in treatment, the generator sources of the D002 it uses in treatment, or the specifications it employs for the use of D002 in treatment to ensure that the D002 meets relevant commercial specifications of virgin treatment material.

35. Over the following years, Beaver also did not correct its failure to demonstrate that its treatment of the oil and organic wastes was equivalent to the applicable treatment technology selected by EPA (in its rulemaking) as the basis for the limitations and pretreatment standards for the oil and organic wastes.

36. On April 26-30, 2004, EPA personnel conducted a multi-media compliance evaluation inspection at the Beaver Facility (April 2004 Compliance Inspection) and sent to Beaver a follow-up multi-media Information Request dated February 28, 2005 (“February 2005 Request”) under, among other authorities, its information and document-gathering authorities found at Section 308 of the CWA, 33 U.S.C. § 1318. Beaver’s response to the Request, received by EPA on May 16, 2005, failed to respond, or failed to adequately respond to several requests for information and failed to produce numerous documents specifically set forth in the Request.

37. On May 8, 2006, EPA issued an administrative order under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to Beaver that explained the CWA’s regulatory scheme and Beaver’s violations. Among other things, the administrative order notified Beaver that its initial certification (which was the predicate for Beaver’s Initial DA) had not accurately described the incoming wastes Beaver accepted, that Beaver had been accepting metal-bearing wastes, and that Beaver had failed to demonstrate that it was providing equivalent treatment for the oil and organic wastes. In addition, EPA’s administrative order specifically listed the information and documents Beaver failed to produce in its response to EPA’s February 28, 2005 Request.

38. Consistent with the above findings, EPA ordered Beaver to cease accepting, treating, and discharging metal-bearing wastestreams until it requested and received an appropriately revised DA; and to submit within 30 days required information demonstrating that it was providing “equivalent treatment” for the oil and organic wastes. EPA also ordered Beaver to provide information and documents it failed to produce in its response to EPA’s February 28, 2005 Request.

39. Despite EPA’s order, Beaver continued to accept and discharge metal-bearing wastestream wastewaters and did not demonstrate that it was providing “equivalent treatment.”

40. Eventually, Beaver applied to the District for authorization to accept metal-bearing wastes. On December 8, 2010, the District issued Beaver a new DA (“2010 DA”) that permitted Beaver to accept and process metal-bearing wastes and subjected Beaver to corresponding effluent limits for its discharges.

41. Sampling data shows that during the time period prior to December 2010, Beaver repeatedly violated the discharge limitations set forth in Special Condition 3 of its Initial DA, which are applicable to facilities accepting only oil and organic wastes.

42. Sampling data for Beaver’s waste streams also shows that both before and after December 2010, Beaver repeatedly violated the effluent limitations applicable to facilities that (like Beaver) receive metal-bearing wastes. 40 C.F.R. §§ 437.10-437.16.

43. The District’s Sewer Use Ordinance and 40 C.F.R. § 403.12(g)(2) required Beaver to notify the District within 24 hours of any violation of applicable pretreatment standards shown by sampling data. Beaver did not comply with this requirement.

## **II. Resource Conservation and Recovery Act**

### **A. Statutory and Regulatory Background**

44. In 1976, Congress enacted RCRA as an amendment to the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA established a “cradle-to-grave” comprehensive federal regulatory program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, storage, treatment, and disposal of hazardous waste. 42 U.S.C. §§ 6901 - 6992k.

45. RCRA’s Subchapter III (RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations and establish performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous

wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260-279, comprise EPA's RCRA hazardous waste program.

46. 40 C.F.R. § 261.2 defines a "solid waste" as any material that is recycled, or accumulated, stored, or treated before recycling, when the material is burned for energy recovery.

47. A solid waste is regulated as a "hazardous waste" if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and it exhibits any of the characteristics of hazardous waste identified in Subpart C of 40 C.F.R. Part 261, or it is listed in Subpart D of 40 C.F.R. Part 261.

48. RCRA directs the Administrator of EPA to identify and list hazardous wastes, and to regulate hazardous waste generators and transporters, and the owners and operators of hazardous waste treatment, storage, and disposal ("TSD") facilities. Pursuant to this statutory scheme, EPA has promulgated regulations, codified at 40 C.F.R. Parts 124 and 260-279, and Illinois has adopted analogous regulations codified at Title 35 Ill. Adm. Code Parts 700-739, that identify and list hazardous wastes and establish standards applicable to hazardous waste generators and transporters, TSD facilities, and used oil handlers and processors. (Citations to the parallel 2006 Code of Federal Regulations are provided herein for reference purposes.)

49. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator may authorize a state to administer its own RCRA hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent and consistent with the federal program.

50. Pursuant to this section, the Administrator granted the State of Illinois final authorization to administer its own hazardous waste program in lieu of the federal government's

base RCRA program effective on January 31, 1986. 51 Fed. Reg. 3778 (January 30, 1986). The Administrator granted final authorization to administer additional requirements effective on later dates. This authorization gave Illinois responsibility for, among other things, issuing permits for TSD facilities within its borders. The IEPA is the state agency within the State of Illinois designated to administer the EPA-authorized RCRA program.

51. EPA's and IEPA's solid waste statute and regulations (as relevant to this lawsuit) require that generators of solid waste and hazardous waste must, among other things:

- a. Treat, store, and dispose of hazardous waste in compliance with permit and other applicable regulatory requirements. *See* 415 ILCS 5/21(e) and 42 U.S.C. § 6925;
- b. Determine whether generated solid wastes are hazardous. *See* 35 IAC § 722.111 and 40 C.F.R. § 262.11; and
- c. Keep records of hazardous waste determinations. *See* 35 IAC § 722.140(c) and 40 C.F.R. § 262.40(c).

52. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved Illinois hazardous waste program, as well as the federal regulations imposed pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984, by filing a civil action in United States district court.

53. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the applicable penalties increase to \$27,500 per day for each violation occurring on and after January 31, 1997; \$32,500 per day for each violation occurring on or after March 15, 2004; and \$37,500

per day for each violation occurring after January 12, 2009. Each day of such violation constitutes a separate violation pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

54. The RCRA regulations provide that, unless excluded from regulation, “solid wastes” can be hazardous wastes in two ways: “characteristic” hazardous wastes, and/or “listed” hazardous wastes. *See* 35 IAC 721, subparts C and D [40 C.F.R. Part 261, subparts C and D].

55. A material may be defined as a “characteristic” hazardous waste based upon its chemical or physical properties. Subpart C of 35 IAC Part 721 provides that a waste expresses a hazardous “characteristic” if it exhibits any of the characteristics of ignitability (designated as D001 wastes), corrosivity (D002 wastes), reactivity (D003 wastes), or toxicity (D004-043 wastes (toxicity is measured for 40 different contaminants present in materials)). *See* 35 IAC §§ 721.120 - 721.124 [40 C.F.R. §§ 261.20-261.24].

56. Subpart D provides a list of specific wastes and general waste categories that are considered RCRA hazardous wastes (*i.e.*, are “listed” hazardous wastes). *See* 35 IAC 721, subpart D [40 C.F.R. Part 261, subpart D].

57. Under 35 IAC § 721.103(c) and (d) [40 C.F.R. § 261.3(c) and (d)] any solid waste generated from the treatment, storage, or disposal of a “characteristic” hazardous waste, will remain regulated as a hazardous waste, unless and until it does not exhibit any of the characteristics of hazardous waste identified in 35 IAC Part 721, Subpart C [40 C.F.R. Part 261, Subpart C]. *See* IAC § 721.103(e)(1) and (d)(1) [40 C.F.R. § 261.3(c)(2)(i) and (d)(1)].

58. The RCRA regulations further provide that, pursuant to 35 IAC § 722.111 [40 C.F.R. § 262.11], any person who generates a solid waste as defined by 35 IAC § 721.102 [40 C.F.R. § 261.2] must conduct a hazardous waste determination to determine whether a waste is a hazardous waste. The generator must keep records of all hazardous waste determinations made

under 35 IAC § 722.111 [40 C.F.R. § 262.11] for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal. *See* 35 IAC § 722.140(c) [40 C.F.R. § 262.40(c)]

59. Because of the dangers posed by hazardous waste, the RCRA regulatory scheme establishes a strict manifesting system whereby hazardous wastes are tracked from their initial generation to their ultimate disposal (“cradle to grave”). The key component of this system is the Uniform Hazardous Waste Manifest (the “manifest”), which is a form prepared by all generators who transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal.

60. Pursuant to 35 IAC § 722.120(a)(1) [40 C.F.R. § 262.20(a)(1)], “A generator who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal, . . . must prepare a Manifest . . . on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part” and (b), “A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.”

61. Because of the dangers posed by hazardous waste, the RCRA regulatory scheme imposes strict handling and record-keeping requirements on how TSD facilities must manage such wastes. No person may conduct any hazardous waste storage, treatment, or disposal without a RCRA permit for the hazardous waste management facility. 35 IAC § 703.121(a)(1) [40 C.F.R. § 270.1(c)].

#### **B. Beaver’s RCRA Permits**

62. Beaver receives, treats, and stores hazardous waste streams in its hazardous waste process building (“HWPB”) portion of its Facility. This part of Beaver’s Facility is regulated as

a hazardous waste management unit under the standards set forth at 35 IAC Part 724 [40 C.F.R. Part 264] and pursuant to the terms of RCRA permit conditions.

63. Beaver's TSD Facility is governed by two RCRA permits: (1) a RCRA permit issued by IEPA ("2006 RCRA State permit") and (2) a hazardous waste management permit issued by EPA Region 5 ("2006 RCRA EPA permit"). Before the 2006 State and EPA permits were re-issued, Beaver's facility was governed by State and EPA permits issued in 1992 (collectively, "1992 RCRA permits").

64. Beaver's State and federally-issued RCRA permits identify the tanks in which Beaver is permitted to manage hazardous wastes it accepts for storage and treatment. These tanks, named T1, T2, T3, T4, T5, T6, T7, T8, and T-9 (the "T-Tanks"), are the only bulk units at the Facility permitted to accept, store or treat hazardous wastes.

65. Beaver's 2006 State RCRA permit requires Beaver to "document the receipt of each load of waste at that site in the operating record" and to include in the record the "results of the mandatory, and any supplemental, analyses performed on the received waste." *See* 2006 State RCRA permit condition IX.A.2. The 2006 State RCRA permit also requires Beaver to "maintain a written operating record at the facility in accordance with 35 IAC § 724.173." *See* 2006 State RCRA permit condition VIII.46.

66. The referenced regulations at 35 IAC § 724.173 [40 C.F.R. § 264.73] require facilities to record and maintain an "Operating Record" showing the "quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage, or disposal at the facility. . . ." At all times, the Operating Record must also document "the location of each hazardous waste load within the facility and the quantity at each location," including "cross references to any manifest document numbers if the waste was accompanied by a manifest."

67. This information must be recorded “as it becomes available” and “maintained in the operating record until closure of the facility.” *Id.*

68. Facilities that receive a hazardous waste shipment accompanied by a manifest must “retain at the facility a copy of each manifest for at least three years from the date of delivery.” 35 IAC § 724.171(a)(5) [40 C.F.R. § 264.71(a)(2)(v)].

69. Condition I.E.9.b. of Beaver’s 2006 EPA RCRA permit requires Beaver to retain, at the facility, all records as specified in 40 CFR § 264.74, which states “the retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.”

70. Beaver’s 2006 State RCRA permit requires that before Beaver places wastes in a storage unit at the Facility, Beaver must assess the compatibility of such wastes with the wastes already stored therein (2006 State RCRA permit condition IX.A.5.).

### **C. Beaver’s RCRA Violations**

#### **1. Unpermitted Storage and Unmanifested Shipments of Hazardous Waste**

71. At its Hodgkins facility, Beaver initially treats hazardous waste in the T-Tanks, which are RCRA-permitted to treat and store hazardous waste. If the hazardous waste load contains oil, the waste load is sent to tank T-5, where it is heated, and the waste is separated into three phases: water (which is pumped to wastewater treatment); oily waste; and overhead distillates. According to Facility pumping logs, Beaver then sends the oily portion of the hazardous waste to the F-Tanks, which are not permitted to treat or store hazardous waste.

72. Additionally, according to statements by Beaver, the overhead distillate portion of the hazardous waste are also sometimes sent to the non RCRA-permitted F-Tanks.

73. The oily portion and the overhead distillate of the hazardous waste is then mixed with used oil from the other parts of the non-RCRA-permitted portion of the plant and marketed as a fuel. The facilities to which Beaver sells the fuel are not permitted to treat, store, and dispose of hazardous waste. *See* 415 ILCS 5/21(e) and 42 U.S.C. § 6925.

74. Beaver's actions have violated the RCRA regulations applicable to the transportation and storage of hazardous wastes and threaten environmental harm if the burning of the oil mixed with wastes from the hazardous waste permitted T-tanks releases into the atmosphere heavy metals and other potentially dangerous constituents therein that were the basis for the material to be classified as hazardous.

75. Beaver sells the oily wastes and overhead distillates that it mixes with used oil as fuel to off-site burners; that is, these materials are being recycled by being burned for energy recovery. As such, the oily wastes and overhead distillates are "solid wastes." 35 IAC 721.102 [40 C.F.R. § 261.2]. With exceptions not applicable here, the RCRA regulations provide that "any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off), is a hazardous waste." 35 IAC § 721.103(e)(1) [40 C.F.R. § 261.3(c)(2)(i)].

76. Thus, the oil and overhead distillates that Beaver generates from the hazardous wastes, continue to be regulated hazardous wastes, unless and until Beaver establishes, in compliance with applicable regulations, that the waste is no longer hazardous (e.g., the waste no longer exhibits any of the characteristics identified in the regulations). 35 IAC Part 721, Subpart C [40 C.F.R. Part 261, Subpart C].

77. Generators, like Beaver, must make a hazardous waste determination to determine, via testing or by applying knowledge of the materials or the treatment processes used, whether the resulting waste derived from the treatment of a hazardous waste no longer exhibits any of the characteristics of a Subpart C characteristic hazardous waste. 35 IAC § 722.111(c) [40 C.F.R. § 262.11(c)]. Any testing must be conducted according to methods set forth in 35 Ill. Adm. Code 721, Subpart C [40 C.F.R. Part 261, Subpart C], or according to an equivalent method approved under 35 IAC § 720.121 [40 C.F.R. § 260.21].

78. Generators, like Beaver, must also keep records documenting all such hazardous waste determinations. 35 IAC § 722.140 [40 C.F.R. § 262.40].

79. During the time period 2004 to 2009, Beaver coded more than five million gallons of hazardous wastes with hazardous waste method management code H061, which means, “Fuel blending prior to energy recovery at another site (waste generated either on-site or received from off-site).” This documented Beaver’s intent to extract oil or distillate from the hazardous wastes for sale to an off-site burner.

80. Most of the waste that Beaver coded as H061 was Subpart C characteristic waste. Beaver did not conduct proper hazardous waste determinations to demonstrate that the wastes derived from the treatment of these hazardous wastes were no longer hazardous.

81. During the time period 2004 to 2009, Beaver failed to maintain, in a legible form, facility pumping logs, whose purpose as a component of the operating record is to track and record hazardous waste transfers between tanks. Prior to 2011, Beaver has no record of any testing for hazardous characteristics for much of the treated hazardous waste that was sent to the F-tanks to be mixed with used oil into a fuel product. Beaver also has no record of any other knowledge-based determination as to the hazardous characteristics of the treated waste.

82. Beaver also sent the overhead distillates from the treatment of hazardous waste to the F-tanks from tank T9 without conducting any testing. Information provided by Beaver during the December 2012 inspection and in response to information requests, indicated that Beaver did not test or keep records showing that the overhead distillates were sent from tank T9 to the F-tanks.

83. On February 27, 2013, EPA sent to Beaver a formal Request for Information and Documents under Section 3007 of RCRA, 42 U.S.C. § 6927. Among other things, this information and document request asked Beaver to provide records of transfers and waste determinations for materials put into the F-tanks, as required by its 2006 State RCRA permit condition VIII.46 and 35 IAC § 724.173 [40 C.F.R. § 264.73]. In response to this request for documents, Beaver, in its March 28, 2013 response, stated that they do not keep specific records of the method, quantities, or frequency of transfers from T-tanks to F-tanks. The response also provided no records associated with any waste determinations Beaver made on materials transferred from tank T9 to the F-tanks as required by 35 IAC § 722.111 [40 C.F.R. § 262.11] and 35 IAC § 722.140 [40 C.F.R. § 262.40].

84. Storage and treatment of hazardous waste is only allowed to be conducted in units covered by the RCRA permit, and the F-tanks are not included in the RCRA permit.

85. After mixing the hazardous waste with the used oil, the resulting mixture of hazardous waste and used oil is sold and shipped off-site. Beaver has periodically tested the mixture of hazardous waste and used oil for a selected set of metals. But when Beaver conducted this testing, Beaver has not used the approved method set forth in the applicable RCRA regulations, 35 IAC § 721.124(a) [40 C.F.R. § 261.24(a)]. The tests that Beaver employed did not cover all of the hazardous constituents that could reasonably be expected to be

present in the used oil/hazardous waste mixture and were not sufficient to establish that the mixture was not hazardous.

86. Beaver has stated that it marketed fuel recovered at its Facility to facilities that were not authorized to receive hazardous waste from off-site.

87. TSD facilities, like Beaver, initiating shipments of hazardous wastes off-site must comply with generator requirements. *See* 35 IAC §§ 722.110(h) and 724.171(c) [40 CFR §§262.10(h) and 264.71(c)]. Beaver's shipments of hazardous waste off-site were not accompanied with a hazardous waste manifest (EPA Form 8700-22), as required of generators by 35 IAC § 722.120(a)(1) [40 C.F.R. § 262.20(a)(1)].

## **2. Failure to Conduct Compatibility Testing**

88. Based on statements Beaver made to EPA, Beaver has used the incorrect test for determining compatibility. Beaver stated that it performs compatibility testing with "the acid test" and that composite test results under this test are included in its lab sheets. The regulations require use of Liquid Waste Compatibility Test D5058A to determine whether a waste potentially will have a hazardous reaction with other wastes already present in the tanks. The "acid test" that Beaver is performing does not identify all potential compatibility problems.

## **3. Failure to Make and Maintain Records**

89. While Beaver's operating record shows the quantity of each hazardous waste shipment when it is initially received, the record does not adequately show how the waste is handled after receipt. The record does not show the location of each hazardous waste load within the facility and the quantity at each location, including cross references to any manifest document numbers as required by 35 Ill. Admin. Code § 724.173 [40 C.F.R. § 264.73].

90. For example, when oil is pumped from the receiving tank to T9, the record does not show the amount pumped. Neither does the record show the amount or dates on which overhead distillates are pumped to T9.

91. Beaver's operating record also fails to record the methods and dates of treatment of the hazardous wastes as required by 35 Ill. Admin. Code § 724.173 [40 C.F.R. § 264.73].

### **COUNT I—CWA— ACCEPTING AND DISCHARGING METAL-BEARING WASTE**

92. From December 2003 through December 2010, Beaver's Initial DA prohibited Beaver from treating and/or discharging any metal-bearing wastes or wastewater generated from treatment of such wastes into the District's sewer system.

93. From December 2003 through December 2010, Beaver repeatedly treated and/or discharged metal-bearing wastewater into the District's sewer system in violation of its Initial DA and Section 307(d) of the CWA, 33 U.S.C. § 1317(d).

94. Beaver is liable for a civil penalty of up to \$27,500 per day for each violation on or before March 15, 2004; \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 33 U.S.C. § 1319(d), as amended by Pub. L. No. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008); and 78 Fed. Reg. 66643 (Nov. 6, 2013).

### **COUNT II—CWA—INCOMING WASTE: RECORDS AND REPORTING**

95. From December 2003 through December 2010, Beaver failed to maintain records containing all the information about incoming wastes required by Special Condition 6 of its Initial DA.

96. From December 2003 through December 2010, Beaver failed to include in its monthly influent wastestream reports to the District all the information about incoming wastes that Special Condition 6 of its Initial DA required to be included in those reports.

97. From December 2003 through December 2010, Beaver also failed to maintain all the On-Site Compliance Paperwork required by 40 C.F.R. § 437.41(c). In particular, Beaver failed to maintain (1) a sufficient description of the subcategory wastes being accepted for treatment at the Facility; and (2) information and supporting data establishing that its treatment systems were achieving equivalent treatment of the oils and organic wastes.

98. Beaver is liable for a civil penalty of up to \$27,500 per day for each violation on or before March 15, 2004; \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 33 U.S.C. § 1319(d), as amended by Pub. L. No. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008); and 78 Fed. Reg. 66643 (Nov. 6, 2013).

### **COUNT III—CWA—EFFLUENT LIMITS AND REPORTING**

99. Special Condition 3 of Beaver's Initial DA and the Pretreatment Standards set numerical limits on the amounts of certain pollutants that may be present in Beaver's effluent.

100. From December 2003 through December 2010, Beaver repeatedly exceeded the numerical effluent limitations contained in Special Condition 3 of its Initial DA and in the Pretreatment Standards applicable to wastewater associated with the treatment of combined oil and organic wastes. 40 C.F.R. § 437.42(e).

101. After December 2010, Beaver was subject to a revised DA that permitted Beaver to also treat metal-bearing wastes and imposed associated numerical limitations on the amounts of certain pollutants that may be present in Beaver's effluent.

102. From December 2010 through the present, Beaver has violated the effluent limitations in its 2010 DA and in the Pretreatment Standards applicable to wastewater resulting from the treatment of combined oil, organics and metal-bearing wastes. 40 C.F.R. §§ 437.10 - 437.16.

103. Beaver failed to notify the District within 24 hours of the above effluent violations.

104. Each such failure violated 40 C.F.R. § 403.12(g)(2) and the District's Sewer Use Ordinance.

105. Beaver is liable for a civil penalty of up to \$27,500 per day for each violation on or before March 15, 2004; \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 33 U.S.C. § 1319(d), as amended by Pub. L. No. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008); and 78 Fed. Reg. 66643 (Nov. 6, 2013).

**COUNT IV—CWA—VIOLATION OF ADMINISTRATIVE ORDER**

106. Beaver violated the terms of a CWA Section 309(a) Administrative Order issued to it on March 9, 2006, by failing to cease accepting, treating, and discharging metal-bearing wastewaters until it requested and received an appropriately revised DA; and by failing to submit required information demonstrating that it was providing "equivalent treatment" for the oil and organic wastes, as required by the Order.

107. Beaver is liable for a civil penalty of up to \$27,500 per day for each violation on or before March 15, 2004; \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 33 U.S.C. § 1319(d), as amended by Pub. L. No. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008); and 78 Fed. Reg. 66643 (Nov. 6, 2013).

**COUNT V—RCRA FAILURE TO MAKE HAZARDOUS WASTE DETERMINATIONS**

108. Any person who generates a solid waste as defined by 35 IAC § 721.102 [40 C.F.R. § 261.2] must conduct a hazardous waste determination to determine whether a waste is a hazardous waste. 35 IAC § 722.111 [40 C.F.R. § 262.11].

109. From June 2009 to the present, Beaver repeatedly violated 35 IAC §§ 722.111 [40 C.F.R. § 262.11] by failing to conduct and document the required hazardous waste determinations on the hazardous wastes derived from the treatment of hazardous wastes.

110. Each time that Beaver failed to make a hazardous waste determination on the hazardous wastes derived from the treatment of hazardous waste, and each time that Beaver failed to keep records of the hazardous waste determination is a separate violation of RCRA. *See* 42 U.S.C. § 6928(g).

111. Unless required to comply by an order of the Court, Beaver will continue to violate 35 IAC §§ 722.111 and 722.140 [40 C.F.R. §§ 262.11 and 262.40].

112. Beaver is liable for a civil penalty of up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 42 U.S.C. § 6928(g), as amended by Pub. L. 104-134, Section 31001, 110

Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (1996); 67 Fed. Reg. 41,343 (2002); and 73 Fed. Reg. 75,340 (2008).

**COUNT VI—RCRA—FAILURE TO OBTAIN  
HAZARDOUS WASTE TREATMENT AND STORAGE PERMIT**

113. Under Beaver's 2006 State permit (condition II.B), Beaver is only permitted to treat and store bulk hazardous waste in specified T-Tanks in the HWPB.

114. During the time period June 2009 to the present, Beaver repeatedly violated its 2006 State RCRA permit, Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 35 IAC § 703.121 [40 C.F.R. § 270.1(c)] by sending hazardous waste derived from the treatment of hazardous waste to non-RCRA-permitted tanks, mixing it with used oil, and storing the resulting mixtures in the non-RCRA-permitted F-Tanks and/or other Facility locations where Beaver is not permitted to treat or store hazardous waste.

115. Each day that Beaver failed to comply with 2006 RCRA permit and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), is a separate violation of RCRA. *See* 42 U.S.C. § 6928(g).

116. Unless required to comply by an order of the Court, Beaver will continue to violate its 2006 State RCRA permit, Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 35 IAC §§ 730.101(c) [40 C.F.R. § 270.1(c)].

117. Beaver is liable for a civil penalty of up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 42 U.S.C. § 6928(g), as amended by Pub. L. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (1996); 67 Fed. Reg. 41,343 (2002); and 73 Fed. Reg. 75,340 (2008).

**COUNT VII—RCRA—FAILURE TO CONDUCT COMPATIBILITY TESTING**

118. Beaver's 2006 State RCRA permit condition IX A.5 required Beaver to conduct compatibility testing using the Liquid Waste Compatibility Test ASTM D-5058-90 on hazardous waste received for container storage and for bulk storage at its Facility.

119. From June 2009 to the present, Beaver repeatedly violated this requirement by failing to conduct the required compatibility test.

120. Each time that Beaver failed to comply with the requirements of 2006 State RCRA permit condition IX A.5 is a separate violation of RCRA. *See* 42 U.S.C. § 6928(g).

121. Unless required to comply by an order of the Court, Beaver will continue to violate 2006 State RCRA permit condition IX A.5.

122. Beaver is liable for a civil penalty of up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 42 U.S.C. § 6928(g), as amended by Pub. L. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (1996); 67 Fed. Reg. 41,343 (2002); and 73 Fed. Reg. 75,340 (2008).

**COUNT VIII—RCRA—FAILURE TO GENERATE AND MAINTAIN RECORDS**

123. Beaver's 2006 State RCRA permit conditions VIII.46 and IX.A.2. and 35 IAC § 724.173 [40 C.F.R. § 264.73] required Beaver to maintain an operating record showing the quantity of each hazardous waste received, methods and dates of its treatment, storage, or disposal at the Facility, and, at all times, the location of each hazardous waste load within the Facility and the quantity at each location, including cross references to any manifest document numbers.

124. From June 2009 to the present, Beaver repeatedly violated this requirement by failing to make and maintain the required records.

125. Beaver's 2006 RCRA State Permit Condition IX.A.2. and 35 IAC § 722.140 [40 C.F.R. § 262.40] required Beaver to make and maintain records of required hazardous waste determinations on all solid wastes generated through its treatment of hazardous waste.

126. From June 2006 to the present, Beaver violated this requirement by failing to make and maintain the required records.

127. Each time that Beaver failed to comply with its RCRA permits or the cited regulations is a separate violation of RCRA. *See* 42 U.S.C. § 6928(g).

128. Unless required to comply by an order of the Court, Beaver will continue to violate its RCRA permit, 35 IAC §§ 724.173 and 722.140 [40 C.F.R. §§ 264.73 and 262.40] and 35 IAC § 724.171(a)(5) and 35 IAC § 724.174(b) [40 C.F.R. § 264.71(a)(2)(v) and 40 C.F.R. § 264.74(b)].

129. Beaver is liable for a civil penalty of up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation thereafter. 42 U.S.C. § 6928(g), as amended by Pub. L. 104-134, Section 31001, 110 Stat. 1321-373 (1996); 61 Fed. Reg. 69,360 (1996); 67 Fed. Reg. 41,343 (2002); and 73 Fed. Reg. 75,340 (2008).

### **PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations above, the United States of America requests that this court:

1. Permanently enjoin Beaver from operating its facility in violation of the Clean Water Act and RCRA;

2. Assess a civil penalty against Beaver of up to up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation taking place thereafter;

3. Award the United States its costs of this action; and

4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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