

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

APRIL 8, 2010

Andrew M. Kenefick
Senior Legal Counsel
Waste Management
801 Second Avenue, Suite 614
Seattle, WA 98104

RE: **60-DAY NOTICE OF UNACCEPTABILITY**
Under the CERCLA Off-Site Rule and Opportunity for Informal Conference

Dear Mr. Kenefick:

This Notice letter (Notice) is to notify you that the U.S. Environmental Protection Agency, Region IX, (EPA) has determined that conditions existing at the Chemical Waste Management Inc. Kettleman Hills Facility [CAT000646117] located at 35251 Old Skyline Road, in Kettleman City, California ("Kettleman") may render units at the Kettleman facility involved in the management of PCBs unacceptable for receipt of hazardous substances and pollutants and contaminants generated as a result of removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This Notice is issued in accordance with the "Procedures for Planning and Implementing Off-Site Response Actions" ("Off-Site Rule"), 40 CFR § 300.440.

The purpose of the Off-Site Rule is to prevent wastes from CERCLA-authorized or -funded response actions from contributing to present or future environmental problems. The Off-Site Rule requires the proper handling of Superfund waste and requires that these wastes be managed in units that are environmentally sound. EPA promulgated the Off-Site Rule on September 22, 1993, and the Off-Site Rule became effective on October 22, 1993. A copy of the Off-Site Rule is enclosed for your review.

Pursuant to 40 CFR § 300.440(d)(9), this determination of unacceptability becomes effective sixty (60) days from the issuance of the Notice. As the effective date is counted from the date of issuance and not upon receipt, we have transmitted to you by facsimile a copy of this Notice on the date it was issued.

This Notice is based upon a determination that the facility has not been in full compliance with the applicable requirements under the Toxic Substances Control Act

(TSCA), 15 U.S.C. § 2601 et seq.; TSCA approval conditions; and the California Code of Regulations. Violations at the facility are specified in the Notice of Violation issued April 7, 2010. The violations include a continued use violation [see 40 C.F.R. § 761.30(u)(1)] and improper disposal of PCBs [see 40 C.F.R. §§ 761.50(b)(1) and 761.60(a)].

EPA documented PCBs in excess of the 10 µg/100 cm² threshold in the PCB Storage and Flushing Building, below both drain valve caps at the 10,082-gallon PCB tank. EPA documented PCBs above 1 ppm in soil outside of the PCB Storage and Flushing Building. PCBs in excess of 1 ppm violates TSCA's PCB disposal provisions.

In order to return to compliance proceed as described below:

A. Outside PCB Draining Area:

1. §761.61

(a) Characterize the extent of contamination. Approval of EPA is needed. If ≥ 50 ppm is found in soil, further cleanup will be necessary.

or

(b) Clean entire area to < 1ppm and keep records. EPA approval is not needed.

B. Inside PCB Building:

1. §761.30(u)(1)(i)-(ii)

(a) Cleanup in accordance with TSCA PCB disposal approval.

or

2. §761.79.

(a) Meet the decontamination standards under this section.

In addition, while TSCA regulates PCBs in concentrations ranging from and equal to 1 ppm and above; PCBs in concentrations > 5 ppm are considered to be hazardous waste in California. Options chosen for compliance for both inside and outside the PCB storage building need to take into consideration the State of California regulations.

The Off-Site Rule prohibits, among other things, the transfer of wastes from response actions authorized or funded by CERCLA to a facility that has relevant violations of TSCA. EPA has determined that the violations at Kettleman are relevant, pursuant to 40 CFR § 300.440(c)(1), and therefore warrant a determination of unacceptability for Kettleman as a PCB disposal facility. As noted above, this determination of unacceptability becomes effective sixty (60) days from the issuance of this Notice.

The Off-Site Rule provides the facility owner or operator with an opportunity for an informal conference with EPA to discuss the basis for the underlying violations and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. Pursuant to 40 CFR § 300.440 (d)(4), if Kettleman submits a written request for an informal conference **within 10 calendar days from the issuance of this notice**, EPA Region 9

will provide Kettleman the opportunity for such conference no later than 30 calendar days after the issuance date of the notice, if possible. Kettleman may also submit written comments for EPA's consideration. Kettleman may submit written comments by the 30th day after issuance of the notice, in addition to or instead of requesting an informal conference.

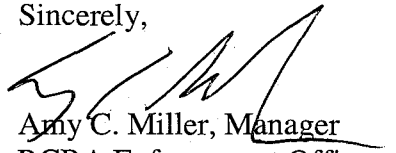
The failure to submit a written request for an informal conference, or to submit written comments specifically addressing this unacceptability determination, will result in the PCB management units at Kettleman becoming unacceptable to receive CERCLA wastes on the 60th day after this notice was issued. If Kettleman presents information, either by means of an informal conference or written comments, EPA will inform you in writing as to whether the information is sufficient to show that the PCB management units at the facility are operating in compliance with the applicable requirements of TSCA or whether the determination of unacceptability has not been reversed.

The responsible agencies and private parties will then cease any transport or authorization of transport of CERCLA wastes to the PCB management units at the Kettleman facility on the effective date of this Notice. The Kettleman facility will remain unacceptable until such time as the EPA notifies the owner or operator of Kettleman otherwise.

Within 10 days of hearing from the EPA after the informal conference or the submittal of written comments, Kettleman may request a reconsideration of the unacceptability determination by the Director of the Waste Management Division. This reconsideration, if granted, will be made by review of the record, by the Director of the Waste Management Division; reconsideration does not automatically stay the determination beyond the 60-day period. Kettleman will receive notice in writing of the decision of the Director of the Waste Management Division.

The Director of the Waste Management Division may decide to extend the 60-day period if more time is required to achieve compliance. Kettleman shall be notified if the Director of the Waste Management Division extends the 60 days. If you have questions concerning the off-site rule, please contact Kandice Bellamy, Region 9 CERCLA Off-Site Rule Coordinator, at (415) 972-3304. Legal questions should be directed to Rebecca Sugerma, Assistant Regional Counsel, at (415) 972-3893.

Sincerely,



Amy C. Miller, Manager
RCRA Enforcement Office
Waste Management Division

Enclosures Copy of the 9/22/93 Federal Register Final Rule and Preamble

cc: Jane Diamond, Region 9 Superfund Division Director
Chuck McLaughlin, DTSC