



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC MAIL
CONFIRMATION OF RECEIPT EMAIL REQUESTED

Mr. Brent Fairchild
Environmental, Health and Safety Director
TAV Holdings, Inc.
3311 Empire Boulevard, SW
Atlanta, Georgia 30222
bfairchild@tavholdingsinc.com

And

Mr. William S. "Buddy" Cox
Partner
Bradley Arant Boult Cummings LLP
One Federal Place 1819 Fifth Avenue North
Birmingham, Alabama 35203
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Re: RCRA 7003 Administrative Order, Docket No. RCRA-04-2022-2101
EPA Response to Specific Submissions and Notice of Noncompliance
TAV Holdings, Inc.

Dear Mr. Fairchild and Mr. Cox:

On January 10, 2022, the U.S. Environmental Protection Agency issued a Resource Conservation and Recovery Act (RCRA) Section 7003(a) Administrative Order (the Order), Docket Number RCRA-04-2022-2101, to TAV Holdings, Inc. (TAV) and other Respondents. The Order became effective on January 18, 2022 and requires the named Respondents to complete the work required in Section VII of the Order (Order/Work to be Performed). Following the issuance of the Order, Respondent TAV has provided the EPA with the following submissions and information relating to implementation of the Order:

1. Opportunity to Confer Presentation, dated January 18, 2022;
2. TAV's Response to the Order, dated January 21, 2022;
3. Statement of Qualifications for Industrial Environmental Consultants, LLC (IEC), which included its Quality Management Plan (QMP), submitted January 31, 2022;
4. Phase 1 and Phase 2 Perimeter Site Security Fencing Work Plan, submitted February 1, 2022;
5. Clarification Email to Fencing Work Plan, submitted February 15, 2022;
6. Ambient Air Monitoring Plan, dated February 14, 2022;
7. Weekly Progress Report Format, submitted February 15, 2022;
8. Request for a 30-day Extension to work plan due dates, submitted February 15, 2022; and

9. Weekly Progress Report for the week of February 14, 2022 to Friday, February 18, 2022, submitted February 21, 2022.

With this letter, the EPA is notifying TAV of its noncompliance with several of the requirements of the Order.¹

Project Coordinator and Contractor/Consultant Notification (Paragraphs 78, 80, and 81)

In Respondent TAV's Opportunity to Confer Presentation and its Response to the Order, TAV named Mr. Brent Fairchild as its Project Coordinator. Although this notification was timely and included Mr. Fairchild's contact information and title, it did not include his qualifications as required by Paragraph 78 of the Order.

Respondent TAV's Opportunity to Confer Presentation and Response to the Order identified Industrial Environmental Consultants, LLC (IEC) as its primary contractor for the work required under the Order. On January 31, 2022, TAV provided the EPA with IEC's Statement of Qualifications (required by Paragraph 80 of the Order) and Quality Management Plan (QMP) (required by Paragraph 81 of the Order). Per Paragraph 81 of the Order, "[t]he qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification that such persons meet objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project." After reviewing the QMP and Statement of Qualifications submitted for IEC, and as discussed with TAV during our weekly calls, it appears that IEC does not have the capacity to serve as the primary consultant managing the environmental issues at the Facility. In addition, the QMP fails to meet the EPA's minimum requirements as set forth in Paragraph 81 of the Order.

Cessation of Releases (Paragraph 82)

Pursuant to Paragraph 82 of the Order, Respondents must immediately "cease all activities (including operations, business practices, and material management, including commingling, mixing, and receipt and transfer of ASR waste) that may result in the release of solid and/or hazardous waste into the environment, including, but not limited to, ceasing the placement of ASR waste, intermediates from the processing of ASR waste, materials resulting from the processing of ASR waste, wastewaters and/or process waters, sludge, and/or any other wastes, directly onto the ground, including onto asphalt, concrete, or other surfaces." TAV has chosen to rely on its proposed "zero discharge system" (hereinafter, "ZDS") to satisfy this requirement.

This system was first proposed during the January 18, 2022 Opportunity to Confer Presentation. Further, in TAV's Response to the Order (dated January 21, 2022), it stated that it had "completed the work necessary to capture retain, and use on-site all stormwater, that was previously directed to the NPDES outfalls." The Response went on to state: "[W]e believe that we have satisfied the requirement of paragraph 82 of the Order."

To the extent TAV is proposing to use its ZDS to comply with the Order, it must submit to the EPA for approval, the contractors it has chosen to perform the work (see Paragraph 80 of the Order), as well as a

¹ Be advised that this letter is a summary of TAV's noncompliance with certain requirements of the Order and it is not intended to be all inclusive.

work plan outlining the work, including design drawings and professional engineer certification (as necessary) for this system (see Paragraph 84 of the Order).

In addition, based on the EPA's site visit on January 28, 2022, materials were still being stored on the ground and releases were continuing to occur, even with the partially constructed concrete wall. Thus, not only has Respondent TAV failed to comply with the explicit prohibitions contained in Paragraph 82 (i.e., no storage of ASR waste on the ground, no commingling of materials), it has also failed to comply with its own commitment to achieve zero discharge and prohibit all releases from the Facility.

Signage and Site Security (Paragraphs 87 and 88)

Pursuant to Paragraphs 87 and 88 of the Order, Respondents were required to provide a plan for implementing site security, as well as proposed imminent and substantial endangerment sign design and placement locations, to the EPA within five (5) days of the Effective Date of the Order, or by January 24, 2022.² On February 1, 2022, TAV provided its proposed "Phase 1 and 2 Perimeter Site Security Fencing Work Plan". After the EPA requested clarification relating to the phases of the proposed fencing during the weekly progress report meeting on February 8, 2022, TAV clarified in an email on February 15, 2022 that TAV is proposing three phases of fencing, with the first two phases focused solely on the 3320 Empire Boulevard location. The third phase proposal has not been submitted. During our February 15, 2022 weekly progress report meeting, the EPA communicated concerns and deficiencies related to the fencing work plans, some of which include:

- Neither the Phase 1 nor Phase 2 plans, or accompanying diagrams, identify where existing fencing is located, or whether signage is being proposed on any existing fencing.
- Installation of permanent perimeter fencing at this phase may cause unnecessary expense and logistical issues given that soil and sediment cleanup may be necessary as the work proceeds. Temporary fencing during this phase of the process may be more appropriate.
- TAV indicated that the fencing posts would be installed using direct push technology; however, the work plans are silent on this issue.
- Additional details regarding the secured access points should be provided.
- The work plans do not address signage at entry points as required by Paragraph 87.c.
- The work plans are silent on any proposed fencing plans for the main TAV facility located at 3311 Empire Boulevard (although it appears that this may be contemplated in TAV's proposed "Phase 3").
- The proposed schedule includes a work plan preparation date of 1/20/2021 (which should likely be 1/20/2022).
- The work plans lack the certification required by Section XII of the Order.

In addition to the above concerns and deficiencies, pursuant to Paragraph 88 of the Order, Respondents were required to "immediately" initiate the development, design, and construction of signage to notify the public of the possible imminent and substantial endangerment posed by the hazardous waste management practices at the Facility. This requirement is in addition to the signage required by Paragraph 87. As mentioned in our February 1, 2022 Response, the "imminent and substantial

² In the EPA's February 1, 2022 Response Letter, we specifically rejected TAV's proposal that a "Site access and site restriction work plan" be submitted within forty-five (45) days of the Effective Date.

endangerment” signage is a statutory requirement under Section 7003 of RCRA. Neither the Phase 1 nor Phase 2 work plans address this signage requirement. The signage placement and proposal for this particular signage requirement was due on January 24, 2022 and has not yet been submitted. Please revise the Site Security Plan and resubmit it (including all text, tables, maps, and photographs in Microsoft Word or Adobe portable document format [.pdf]) via email to Brooke York and David Champagne at york.brooke@epa.gov and champagne.david@epa.gov, with a copy to Araceli Chavez at chavez.araceli@epa.gov, within **ten (10) days of your receipt of this letter** as required by Paragraph 95 of the Order.

Compliance with Additional Work Plans for Site Stabilization, Material Management, and Disposal Procedures (Paragraph 84)

Pursuant to Paragraph 84 of the Order, Respondents are required to submit to the EPA for approval, within thirty (30) days of the Effective Date of the Order, a work plan(s) to address Site stabilization, material management, business practices, and solid and hazardous waste disposal procedures. During the February 15, 2022 weekly progress report call, and via a follow-up email that same day, TAV requested a 30-day extension to the due date (currently, February 17, 2022) for the work plans related to this requirement.

The basis for this extension appears to be TAV’s decision to obtain a supplemental contractor to assist in complying with the Order. However, given TAV’s failure to provide timely or approvable deliverables to date, the EPA is unwilling to grant a 30-day extension.

Weekly Reporting (Paragraph 90)

Pursuant to Paragraph 90 of the Order, Respondents are required to submit a written progress report to the EPA concerning actions undertaken pursuant to the Order on a weekly basis (every week), beginning five (5) days after the Effective Date of the Order, until termination of the work required under the Order; unless otherwise directed in writing by the EPA Project Coordinators. Although TAV and EPA have conducted weekly progress meetings every Tuesday since the Effective Date of the Order on January 18, 2022, TAV did not submit any weekly progress reports until February 21, 2022. In TAV’s Response to the Order, TAV proposed to submit these reports one day after the weekly progress report meetings, currently held on Tuesday afternoons. The EPA approved this request in our February 1, 2022 Response. During our February 15, 2022 weekly progress report meeting, TAV proposed an alternate schedule suggesting that the reports be submitted on the Monday before the Tuesday calls. This letter confirms that the EPA is amenable to the submission of weekly reports every Monday using the format provided via email to the EPA on February 16, 2022 (with the addition of bullets documenting deliverables submitted and/or due during the relevant reporting period).

Ambient Air Monitoring Plan

As noted above, TAV submitted an Ambient Air Monitoring Plan to the EPA on February 14, 2022. This plan was suggested in TAV’s Opportunity to Confer Presentation on January 18, 2022 but is not a requirement under the Order. It appears that TAV is submitting this plan as proposed “Additional Work” under Section VIII of the Order. We are currently reviewing this plan and determining how/whether we will consider it under the Order.

Failure to Comply

Penalties are accruing per day for every instance of noncompliance with the Order as noted above. The statutory maximum penalty for the failure or refusal to comply with the terms of the EPA's 7003 Order is \$16,307 per day for each day that the violation continues or is occurring. As referenced in Paragraph 130, Section XVII of the Order (Failure to Comply), the EPA may commence a civil action in the United States district court to require compliance with the Order and to seek a civil penalty.

If you have any legal questions, please contact Colleen Michuda, Senior Attorney, at (404) 562-9685 or by email at michuda.colleen@epa.gov. For technical matters, please contact David Champagne at (404) 562-9028 or by email at champagne.david@epa.gov, or Brooke York at (404) 562-8025 or by email at york.brooke@epa.gov.

Sincerely,

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

cc: Mr. Rizwan Ullah Khan; Rajpoot Property, Inc. (rkhan@nobledelivery.com)
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