



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 9, 2024

Elliot Berger
President
USC Bag Manufacturing, LLC
2512 Madison Street NE
Albuquerque, NM, 87110

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
USC BAG MANUFACTURING, LLC
EPA ID# NMR000006254**

Dear Mr. Berger,

On September 10, 2020, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Compliance Evaluation Inspection (“Inspection”) at USC Bag Manufacturing, LLC (“USC Bag Mfg”), located at 2512 Madison Street NE, Albuquerque, New Mexico (“Facility”). On July 13, 2023, NMED performed a Follow-up Inspection (“FUI”) to obtain updated information on the compliance status of the Facility, and determine what corrective actions were taken regarding the potential violations described in the inspection report provided to USC Bag on October 14, 2020. USC Bag Mfg prints labels on plastic bags and related products. The Facility generates spent solvents from cleaning and maintenance of the printing presses. These solvents are recycled on-site via the services of a mobile distillation recycler, generating still bottoms that are subsequently shipped off for disposal.

Based on observations and review of the information obtained, NMED has determined that your Facility is a Large Quantity Generator (“LQG”) of hazardous waste as defined in 40 Code of Federal Regulations (“CFR”) 262.13. Furthermore, NMED has determined that USC Bag Mfg has violated the New Mexico Hazardous Waste Management Regulations (“HWMR”) 20.4.1 New Mexico Administrative Code (“NMAC”) as specified below.

NMED inspectors observed the following violations:

- 1. Failure to perform a hazardous waste determination. Specifically, USC Bag Mfg could not provide sampling documentation or other acceptable knowledge documentation during either the initial Inspection or during the FUI to demonstrate that a waste**

determination had been performed for solvent-contaminated wipes generated at the facility. USC Bag Mfg had been disposing of these solvent-contaminated wipes in the municipal solid waste. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.11.

Civil Penalty

As a result of Violation 1, NMED has assessed a civil penalty of \$6,300.00

Corrective Action

On August 23, 2023 and August 30, 2023 USC Bag Mfg provided NMED with sample analysis results demonstrating that solvent-contaminated wipes generated at the Facility meet the definition of ignitable hazardous waste. USC Bag Mfg must provide NMED with documentation demonstrating this waste will be properly disposed as hazardous waste or under the conditions of the solvent-contaminated wipes exemption.

- 2. Failure to label containers of hazardous waste at a Satellite Accumulation Area (“SAA”) with the words “hazardous waste”. Specifically, during the FUI NMED observed two (2) 5-gallon metal containers and one (1) 55-gallon black metal container of hazardous waste solvent at the south ink press SAA that were not labeled with the words “hazardous waste”. NMED also observed the 5-gallon containers were not properly labeled during the initial inspection. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.15(a)(5)(i).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$1,980.00

Corrective Action

On August 30, 2023 USC Bag Mfg provided NMED with photographs demonstrating that satellite hazardous waste containers at the Facility are properly labeled.

- 3. Failure to maintain documentation of compliance with 40 CFR Part 265, Subparts AA, BB, and CC standards for solvent recycling. Specifically, on-site solvent distillation is subject to air emissions standards under 40 CFR 265.AA and 265.BB, due to USC Bag Mfg’s failure to meet conditions for exemption from obtaining a hazardous waste facility permit. A Facility that is subject to the requirement to obtain a hazardous waste storage permit must maintain documentation for on-site recycling of hazardous wastes with a high Volatile Organic Compound concentration. During the initial inspection USC Bag Mfg used a permanent on-site solvent still. At some time following the initial inspection USC Bag Mfg discontinued use of this still and performed solvent distillation through periodic visits by a mobile solvent distillation services contractor, Cyclamation. USC Bag Mfg could not provide documentation of 40 CFR Part 265 Subpart AA, BB, CC compliance during either the initial inspection for the prior on-site solvent still, or during the FUI for the mobile solvent distillation unit utilized during**

visits by the contractor Cyclamation. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(1)(i).

Civil Penalty

NMED determined that no civil penalty should be applied as a result of this violation, in accordance with the Civil Penalty Policy, as it could be considered a derivative violation to Violation #9.

Corrective Action

USC Bag Mfg must provide NMED with documentation, such as policy documents and hazardous waste manifests, demonstrating that USC Bag Mfg will not store any hazardous wastes for greater than 90 days at its Central Accumulation Area (“CAA”).

- 4. Storage of ignitable hazardous waste within 50 feet of the Facility Property line without a written exemption from the relevant fire code authority. Specifically, NMED observed thirty-six (36) 55-gallon black metal containers of still bottom hazardous waste along the east wall of the Facility at the CAA, within 50 feet of the property line. The Albuquerque Fire Rescue Fire Marshal did not have any record of a written authorization being granted to the Facility for storage of these materials within 50 feet of the Facility Property line. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(1)(vi)(A).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$5,250.00

Corrective Action

USC Bag Mfg must provide NMED with documentation, such as photographs, demonstrating that the CAA has been relocated such that it no longer stores hazardous waste within 50 feet of the Facility Property line, or a written approval from the Albuquerque Fire Rescue Fire Marshall allowing hazardous waste accumulation to occur in this area.

- 5. Failure to label containers of hazardous waste with the words “hazardous waste”. Specifically, NMED observed thirty-six (36) 55-gallon black metal containers of still bottom hazardous waste along the east wall of the Facility at the CAA, and forty-four (44) black metal containers of spent solvent hazardous waste awaiting distillation at the next Cyclamation visit opposite this area on the other side of the CAA. Of these containers, only one still bottom hazardous waste container had a visible label with the words “hazardous waste”. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(5)(i)(A).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$173,250.00

Corrective Action

On August 30, 2023 USC Bag Mfg provided NMED with photographs demonstrating that hazardous waste containers at the Facility are properly labeled.

- 6. Failure to mark containers of hazardous waste with the date upon which accumulation began. Specifically, NMED observed thirty-six (36) 55-gallon black metal containers of still bottom hazardous waste along the east wall of the Facility at the CAA, and forty-four (44) containers of spent solvent hazardous waste awaiting distillation at the next Cyclamation visit opposite this area on the other side of the CAA. Five (5) still bottom hazardous waste containers were marked with an incomplete accumulation start date of "5/23", the remainder were not marked with any accumulation start date. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(5)(i)(C).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$124,961.00

Corrective Action

On August 30, 2023 USC Bag Mfg provided NMED with photographs demonstrating that hazardous waste containers at the Facility are dated with an accumulation start date.

- 7. Failure to amend the Contingency Plan following a change in the Emergency Response Coordinators. Specifically, NMED observed that the Contingency Plan pages posted in the facility contained the name of an Emergency Coordinator that is no longer employed by USC Bag Mfg. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.263(d).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$1,430.00

Corrective Action

On August 17, 2023 USC Bag Mfg provided NMED with an updated Facility Contingency Plan with the names and contact information for the current Emergency Coordinators.

- 8. Failure to develop a hazardous waste management training program. Specifically, based on review of the information obtained, USC Bag Mfg does not delineate hazardous waste management activities in Facility position descriptions and does not delineate the types of trainings employees would be required to obtain that are relevant to hazardous waste management activities. Furthermore, of the 8 personnel described in facility responses as having job duties that include hazardous waste management, training records were only provided for one of these employees. This training record consisted of a completed Environmental Management Quiz from 2018.**

USC Bag Mfg has not demonstrated that a hazardous waste management training program has been established for operations at the facility. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(7)(i)(A).

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$50,400.00

Corrective Action

USC Bag Mfg must provide NMED with documentation, such as job descriptions with associated training requirements, or updated policy documentation, demonstrating that the USC Bag Mfg has developed a hazardous waste training program meeting the requirements of 40 CFR 262.17(a)(7), including demonstration that all appropriate personnel are adequately trained relative to their responsibilities.

- 9. Failure to obtain a permit for the storage of hazardous waste for greater than 90 days. Specifically, based on review of the information obtained and observations during the inspection, USC Bag Mfg stored hazardous wastes for greater than 90 days during March-September 2020, December 2020-October of 2021, January-April 2022, and June 2022-August 2023. NMED determined that twenty-eight (28) containers of hazardous waste still bottoms present at the time of the FUI were generated greater than 90 days prior to that inspection. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a); and 20.4.1.900 NMAC, incorporating 40 CFR 270.1(c).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$165,375.00

Corrective Action

On September 8, 2023, USC Bag Mfg provided NMED with disposal documentation demonstrating that hazardous waste containers observed during the inspection that were in storage more than 90 days at the facility have been sent for disposal. USC Bag Mfg must provide NMED with a description of the updated policies and procedures, or other administrative actions, to ensure that hazardous wastes are not stored at the facility for greater than 90 days.

- 10. Failure to properly complete hazardous waste manifests. Specifically, based on review of the hazardous waste manifests obtained, on four (4) occasions since September 2020, USC Bag Mfg failed to fill Box #1 of the hazardous waste manifest with the correct EPA Identification Number for the Facility. In each instance, USC Bag Mfg represented the Facility as corresponding to EPA Identification Number NMCESQG32061, which is not a valid EPA Identification Number. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.20(a).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$5,460.00

Corrective Action

On September 8, 2023 USC Bag Mfg provided NMED with disposal documentation utilizing the correct EPA Identification Number. USC Bag Mfg must provide NMED with a description of the updated policies and procedures, or other administrative actions to ensure that hazardous waste manifests for wastes offered from the USC Bag Mfg Facility shall be properly completed in the future with the accurate EPA Identification Number included.

- 11. Failure to submit a Biennial Hazardous Waste Report. Specifically, based on review of the information obtained, USC Bag Mfg was a Large Quantity Generator during at least one month of Calendar Year 2021. NMED has no record of USC Bag Mfg submitting a Biennial Report for Calendar Year 2021 by the due date of March 1, 2022. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.41(a).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$20,685.00

Corrective Action

On September 1, 2023 USC Bag Mfg provided NMED with submittal of the Calendar Year 2021 Biennial Report. USC Bag Mfg must also submit the Biennial Report for Calendar Year 2023 by March 1, 2024.

- 12. Failure to submit an exception report to NMED when a hazardous waste manifest with the signature of a representative of the destination facility is not received within 45 days of shipment of hazardous waste. Specifically, based on review of the hazardous waste manifests obtained, on at least two occasions USC Bag Mfg either did not receive a copy of a hazardous waste manifest bearing the signature of the disposal facility, or did not retain a copy of this record. NMED has no record of USC Bag Mfg submitting an exception report for hazardous waste shipments sent September 2, 2022 and December 28, 2022. The hazardous waste manifest copies provided by USC Bag Mfg for these shipments did not contain a signature of a representative of the destination facility. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.42(a)(2).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$10,500.00

Corrective Action

USC Bag Mfg must provide NMED with copies of hazardous waste manifests for shipments sent in 2022 bearing the signature of the destination facility, or must prepare

and submit an exception report to NMED describing USC Bag's efforts to locate the hazardous waste sent in these shipments.

13. Failure to pay hazardous waste fees for hazardous wastes generated in Calendar Year 2021 by the due date of August 1, 2022. Specifically, based on review of the information obtained, USC Bag Mfg was a Large Quantity Generator of hazardous waste during at least one month of 2021. NMED has no record of USC Bag Mfg paying hazardous waste fees for waste generation during Calendar Year 2021 by the due date of August 1, 2022. This is a violation of 20.4.3.500(A) NMAC.

Civil Penalty

The applicable civil penalty for this violation consists of the late fees that have been incurred as a result of this failure to pay hazardous waste generation fees in a timely manner. NMED will not impose any additional civil penalties related to this violation.

Corrective Action

On September 6, 2023 USC Bag Mfg submitted payment of past due fees including applicable late fees.

Regarding the Corrective Actions described above, USC Bag Mfg shall provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by USC Bag Mfg to address the violations described above or a schedule for implementation of corrective actions not yet completed.

In accordance with NMSA 1978, Section 74-4-10, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED. Pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 14, NMED is assessing a total civil penalty of \$565,591.00 to settle the violations of the HWA and the Hazardous Waste Management Regulations set forth in the NOV.

History of Violations

On April 13, 2018, NMED performed an inspection prompted by a complaint alleging improper ventilation and fumes. During that inspection, NMED observed six (6) violations including failure to label containers of hazardous waste, failure to keep hazardous waste containers closed, failing to make arrangements with local emergency response authorities and develop a Facility Contingency Plan, failing to pay hazardous waste fees, and failure to perform inspections of the hazardous waste storage area. USC Bag Mfg was subject to an informal enforcement action as a result of that inspection.

On September 10, 2020 NMED performed an inspection prompted by review of manifests obtained demonstrating a waste management concern. NMED provided an inspection report following this inspection that identified a total of 15 Potential Violations, including failure to make a hazardous waste determination for solvent-contaminated rags, failure to keep containers of hazardous waste closed, failure to label or date containers of hazardous waste, failure to maintain air emissions documentation for an on-site solvent recycling unit present at the time of that inspection, failure to perform weekly inspections of the hazardous waste storage area, failure to develop a hazardous waste management training program and properly document trainings provided and required, storage of hazardous waste for greater than 90 days, failure to submit a Facility Contingency Plan Quick Reference Guide, and failure to pay hazardous waste fees. NMED had not sent an enforcement action regarding that inspection due to various factors, however a FUI was performed to conduct a more contemporaneous assessment of USC Bag Mfg's compliance status. Several of the potential violations identified in the September 10, 2020 inspection at the Facility were observed to remain unresolved and out of compliance during this FUI. This repeated disregard for state rules governing the management of hazardous waste poses an increased risk to human health and the environment.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this NOV (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

Pursuant to the NMED Delegation Order dated February 19, 2024, the Cabinet Secretary has delegated the authority to issue Notices of Violation with Proposed Penalties under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter or would like to discuss the civil penalty, please contact Aaron Coffman of my staff at 505-690-5211 or by email at aaron.coffman@env.nm.gov within 30 days of receipt of this notice to schedule an informal conference concerning this matter. If no response is received from you within 30 days, a Stipulated Final Order will be mailed for your signature.

Sincerely,

Ricardo Maestas
Acting Chief
Hazardous Waste Bureau

Mr. Berger
April 9, 2024
Page 9 of 9

RM: ac

cc: Aaron Coffman, NMED HWB
Levi Cole, NMED District I Manager
Gloria Lucero, NMED OGC

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