

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK OF COURT
NORTHERN DISTRICT OF OHIO
COLUMBUS, OHIO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 VON ROLL AMERICA, INC.,)
)
 Defendant.)
 _____)

Case No. **4:06 CV 2893**
JUDGE ECONOMUS
Judge
MAG. JUDGE LIMBERT
Magistrate Judge

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General and through its undersigned attorneys, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties against Defendant Von Roll America, Inc. ("Von Roll") for violations of the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 et seq., the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6901 et seq., and the regulations promulgated under and authorized pursuant to those statutes. The United States alleges that Von Roll violated and currently is in violation of provisions of the National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations (the "Benzene Waste Operations NESHAP"), codified at 40 C.F.R. Part 61, Subpart FF. The United States also alleges that Von Roll previously violated various RCRA provisions, including provisions for air emission standards from certain tanks, surface

impoundments and containers found at 40 C.F.R. Part 265, Subpart CC. The alleged violations occurred or are occurring at Von Roll's hazardous waste treatment, storage and disposal facility in East Liverpool, Ohio.

JURISDICTION, VENUE, AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a), and 42 U.S.C. §§ 6928(a) and 7413(b), because Von Roll's facility is located in this judicial district and the alleged violations took place here.

4. The Attorney General of the United States is authorized to bring this action pursuant to Sections 113(b) and 305 of the CAA, 42 U.S.C. § 7413(b) and 7605, Section 3008(a) or RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516, 519.

NOTICE

5. The United States has provided notice of this action to the Ohio Environmental Protection Agency ("Ohio EPA") in accordance with Section 113(b) of the CAA, 42 U.S.C. 7413(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Defendant Von Roll is a corporation organized under the laws of the State of Delaware and is doing business in the State of Ohio.

7. Von Roll owns and operates a hazardous waste treatment, storage, and disposal facility located at 1250 St. George Street in East Liverpool, Ohio (the "Facility").

8. Von Roll is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and the applicable federal regulations.

**STATUTORY AND REGULATORY BACKGROUND FOR THE
CLEAN AIR ACT**

CAA – General

9. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

Benzene Waste Operations NESHAP

10. Section 112 of the CAA, 42 U.S.C. § 7412, requires U.S. EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”).

11. Benzene is a hazardous air pollutant. 42 U.S.C. § 7412(b)(1); 40 C.F.R. § 61.01(a).

12. Pursuant to Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d), U.S. EPA promulgated the Benzene Waste Operations NESHAP. The regulations are set forth at 40 C.F.R. §§ 61.340-61.358. The Benzene Waste Operations NESHAP first became effective on April 7, 1993.

13. 40 C.F.R. § 61.343 of the Benzene Waste Operations NESHAP sets forth standards that apply to tanks that contain accumulations of benzene-containing waste. Prior to February 10, 2003, all tanks that were subject to the standard at 40 C.F.R. § 61.343 were required

to be covered by a fixed roof. On and after February 10, 2003, tanks alternatively could be located inside a total enclosure.

14. Pursuant to 40 C.F.R. § 61.343(e)(1), a total enclosure of a tank must be designed and operated in accordance with the criteria for a permanent total enclosure specified in “Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure,” found at 40 C.F.R. § 52.741, Appendix B. An owner or operator must perform the verification procedure for the enclosure as specified in Section 5.0 of Procedure T initially when the enclosure is first installed and, thereafter, annually.

15. Pursuant to 40 C.F.R. §§ 61.343(a)(1)(ii) and 61.343(e)(2), vapors from both fixed-roof tanks and tanks located within a total enclosure must be routed through a closed-vent system to a control device. The closed vent system and control device must meet the requirements of 40 C.F.R. § 61.349.

16. Pursuant to 40 C.F.R. § 61.349(a)(2), at all times for fixed roof tanks, the control device could be an enclosed combustion device, a vapor recovery system (which includes a carbon adsorption system), or a flare. Pursuant to 40 C.F.R. § 61.343(e)(2), 68 Fed. Reg. 6082 (February 6, 2003), and 68 Fed. Reg. 67932 (December 4, 2003), tanks within an enclosure were required to be vented to an enclosed combustion device for the period of time between February 10, 2003, and December 4, 2003. Thereafter, they could be vented to a vapor recovery system (including a carbon adsorption system) or a flare as well.

17. Pursuant to 40 C.F.R. § 61.354(d), for a carbon adsorption system that does not regenerate the carbon bed directly on site, either the concentration level of the organic compounds or the concentration level of benzene in the exhaust vent stream from the carbon

adsorption system must be monitored on a regular schedule, and the existing carbon must be replaced with fresh carbon immediately when carbon breakthrough is indicated. The carbon adsorption system must be monitored on a daily basis or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater. As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular, predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and either the organic concentration or the benzene concentration in the gas stream vented to the carbon adsorption system.

NESHAP General Provisions (Subpart A)

18. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, U.S. EPA has promulgated general NESHAP provisions, codified at 40 C.F.R. Part 61, Subpart A, §§ 61.01-61.19, that apply to owners and operators of any stationary source for which a NESHAP is prescribed.

19. 40 C.F.R. § 61.12(c) requires that owners and operators of stationary sources maintain and operate all sources, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions.

CAA Enforcement Provisions

20. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable National Emission Standard for Hazardous Air Pollutants, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for civil penalties of: (i) up to \$27,500 per day for each violation of the NESHAP occurring between January 30, 1997, and

March 15, 2004; and (ii) up to \$32,500 per day for each violation occurring on and after March 15, 2004.

**STATUTORY AND REGULATORY BACKGROUND FOR THE
RESOURCE CONSERVATION AND RECOVERY ACT**

RCRA – General

21. The Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, was enacted on October-21, 1976 and subsequently amended. Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous wastes from their initial generation until their final disposal. 42 U.S.C. §§ 6921-6939. U.S. EPA has promulgated regulations pursuant to Subtitle C of RCRA that set forth the standards and requirements that are applicable to owners and operators of facilities that treat, store, or dispose of hazardous waste (commonly referred to as “TSDFs” for “treatment, storage, and disposal facilities”) and to generators and transporters of hazardous waste. These regulations are found at 40 C.F.R. Parts 260 through 279.

22. Section 3005(a)-(d) of RCRA, 42 U.S.C. § 6925(a)-(d), requires that all owners and operators of TSDFs obtain a permit in order to operate lawfully unless the TSDF has “interim status” pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). For TSDFs that have permits, governing regulations are found at 40 C.F.R. Part 264. For TSDFs that have interim status, governing regulations are found at 40 C.F.R. Part 265.

**Subpart CC: Air Emission Standards for Tanks,
Surface Impoundments and Containers – General**

23. For both permitted TSDFs and TSDFs with interim status, standards exist for air emissions from hazardous waste tanks, surface impoundments, and containers. These standards are found at Subpart CC of Part 264 and Subpart CC of Part 265. 40 C.F.R. §§ 264.1080 – 1091; 40 C.F.R. §§ 265.1080 – 1091.

24. Pursuant to 40 C.F.R. § 264.1080(c), the standards for air emissions from tanks, surface impoundments, and containers found in Subpart CC of Part 265 apply to owners and operators of TSDFs that received a RCRA permit prior to December 6, 1996, unless the RCRA permit is reissued in accordance with 40 C.F.R. § 124.15 or reviewed in accordance with 40 C.F.R. § 270.50(d).

25. 40 C.F.R. Part 265, Subpart CC became effective on December 6, 1996.

Part 265, Subpart CC: Tanks – General

26. Pursuant to 40 C.F.R. § 265.1083(b), owners and operators managing hazardous waste in tanks must control air emissions in accordance with the tank standards found at 40 C.F.R. § 265.1085, and, as applicable, the standards for closed-vent systems and control devices found at 40 C.F.R. § 265.1088.

27. Pursuant to 40 C.F.R. § 265.1085(b), owners or operators of tanks must control air emissions from tanks in accordance with either “Tank Level 1 controls” or “Tank Level 2 controls” depending upon the design, operating conditions, and use of the tank.

28. For tanks subject to “Tank Level 2 controls,” owners and operators must use one, or a combination, of the five types of tanks listed in 40 C.F.R. § 265.1085(d). Two of the five

types of tanks that owners and operators may use are as follows: a tank vented through a closed-vent system to a control device in accordance with the requirements of 40 C.F.R. § 265.1085(g); or a tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements of 40 C.F.R. § 265.1085(i).

Part 265, Subpart CC: Tanks Vented through a Closed-Vent System and Control Device

29. For owners and operators that use tanks vented through a closed-vent system to a control device, the tank, *inter alia*, must be a fixed roof tank and the closed-vent system and control device must be designed and operated in accordance with 40 C.F.R. § 265.1088. 40 C.F.R. § 265.1085(g)(1).

30. A carbon adsorption system may be used as a control device for a fixed roof tank if it is designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight. 40 C.F.R. § 265.1088(c)(1)(i). Following initial start-up of a carbon adsorption system, all activated carbon must be replaced with fresh carbon on a regular basis in accordance with the requirements of either 40 C.F.R. § 265.1033(g) (for carbon adsorption systems that regenerate the carbon directly onsite within the carbon system) or § 265.1033(h) (for carbon adsorption systems that do not regenerate the carbon directly onsite in the carbon adsorption system). 40 C.F.R. § 265.1088(c)(3)(i).

31. An owner or operator has two options to ensure the efficacy of the activated carbon in a carbon adsorption system that does not regenerate its carbon directly onsite within the system. 40 C.F.R. § 265.1033(h). The owner or operator can monitor the concentration level of organic compounds in the exhaust vent stream on a regular schedule and replace the existing

carbon with fresh carbon immediately when carbon breakthrough is indicated. 40 C.F.R.

§ 265.1033(h)(1). Alternatively, the owner or operator can replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established through a design analysis undertaken pursuant to 40 C.F.R.

§ 265.1035(b)(4)(iii)(G). 40 C.F.R. § 265.1033(h)(2). If an owner or operator chooses to monitor for carbon breakthrough, the monitoring frequency must be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of the design analysis undertaken pursuant to 40 C.F.R.

§ 265.1035(b)(4)(iii)(G), whichever is longer. 40 C.F.R. § 265.1033(h)(1).

Part 265, Subpart CC: Tanks within an Enclosure

32. For owners and operators that use tanks located inside an enclosure, the enclosure, *inter alia*, must be vented through a closed-vent system to an enclosed combustion device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater set forth in 40 C.F.R. § 265.1088. 40 C.F.R. § 265.1085(i)(2).

Exemption to Part 265, Subpart CC Requirements for Tanks within an Enclosure

33. A tank within an enclosure used for bulk feed of hazardous waste to a hazardous waste incinerator may be exempt from the requirements of 40 C.F.R. § 265.1085(i) if three conditions are met:

- (i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements of the Benzene Waste Operations NESHAP;
- (ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

- (iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 C.F.R. § 52.741.

40 C.F.R. § 265.1083(c)(5).

General Exemption to Part 265, Subpart CC

34. The requirements of Subpart CC do not apply, *inter alia*, to a tank that an owner or operator certifies-is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 C.F.R. Part 60, Part 61, or Part 63. 40 C.F.R. § 265.1080(b)(7). For a tank within an enclosure, the tank also must satisfy all of the exemption requirements of 40 C.F.R. § 265.1083(c)(5) in order to qualify for an exemption to all requirements of Subpart CC. 40 C.F.R. § 265.1080(b)(7).

RCRA Enforcement Provisions

35. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that whenever, on the basis of any information, U.S. EPA determines that any person has violated or is violating any requirement of RCRA, the United States may file a civil action in federal district court to obtain appropriate relief, including a temporary or permanent injunction.

36. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates a requirement of RCRA shall be liable for civil penalties of: (i) up to \$27,500 per day for each violation of RCRA occurring between January 30, 1997, and March 15, 2004; and (ii) up to \$32,500 per day for each violation occurring on and after March 15, 2004.

GENERAL ALLEGATIONS

37. At its Facility, Von Roll owns and operates two tanks within an enclosure which are used for storing solid hazardous waste (“Waste Pit Tanks”) and twenty-three fixed roof tanks which are used for storing liquid hazardous waste (“Fixed-Roof Tanks”). A portion of the vapors from the Waste Pit Tanks and the Fixed-Roof Tanks (collectively, “Facility’s Tanks”) are routed through a closed-vent vapor recovery system to a carbon adsorption system.

38. On or about April 27, 1984, the Ohio Environmental Protection Agency (“Ohio EPA”) issued Von Roll an Ohio Hazardous Waste Facility Installation and Operation Permit. Ohio EPA issued a new permit on March 23, 2005.

39. On or about January 25, 1985, U.S. EPA issued Von Roll a federal RCRA hazardous waste management permit.

40. At no time did the state RCRA permits or the federal RCRA permit ever include air emission standards for the Facility’s Tanks pursuant to Subpart CC of Part 264.

41. On or about January 31, 2002, and pursuant to 40 C.F.R. § 265.1080(b)(7), Von Roll certified that the Facility’s Tanks, *inter alia*, were equipped with and operating air emission controls in accordance with the Benzene Waste Operations NESHAP. In addition, Von Roll certified that the Waste Pit Tanks satisfied the exemption conditions of 40 C.F.R. § 265.1083(c)(5).

FIRST CLAIM FOR RELIEF
(Benzene Waste Operations NESHAP: 40 C.F.R. § 61.354(d))
Failing to Replace Used Carbon with Fresh Carbon
in the Facility's Carbon Adsorption System

42. The allegations in Paragraphs 1 - 41, are realleged and incorporated herein by reference.

43. Beginning no later than December 6, 1996, and continuing to the present, Von Roll has owned and operated a carbon adsorption system for controlling emissions of volatile organic compounds ("VOC"), including benzene, from the Facility's Tanks.

44. At all relevant times, the Facility's carbon adsorption system has contained and continues to contain a carbon bed that does not regenerate carbon on-site.

45. As the owner and operator of a hazardous waste treatment, storage, and disposal facility, Von Roll is subject to RCRA requirements relating to air emissions standards from tanks, unless an exemption applies. Because Von Roll's RCRA permits never have included these standards, Von Roll is subject to the tank standards found in the interim status regulations at 40 C.F.R. Part 265, Subpart CC, 40 C.F.R. § 264.1080(c), unless an exemption applies.

46. Commencing no later than February 1, 2002, Von Roll certified that the Facility's Tanks, *inter alia*, were equipped with and operating air emission controls in accordance with the Benzene Waste Operations NESHAP and that the Waste Pit Tanks satisfied the exemption conditions of 40 C.F.R. § 265.1083(c)(5), as permitted by the exemption set forth at 40 C.F.R. § 265.1080(b)(7).

47. On numerous occasions from February 1, 2002, to the present, Von Roll failed to immediately replace existing carbon with fresh carbon in its carbon adsorption system when

carbon breakthrough was indicated. In addition, at no time during that period did Von Roll replace existing carbon with fresh carbon at a regular, predetermined interval. By failing to either replace carbon immediately upon breakthrough or replace it at a regular, predetermined interval, Von Roll violated 40 C.F.R. § 61.354(d).

48. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Von Roll is subject to injunctive relief and civil penalties of: (i) up to \$27,500 per day for each violation of the NESHAP occurring between February 1, 2002, and March 15, 2004; and (ii) up to \$32,500 per day for each violation occurring on and after March 15, 2004.

SECOND CLAIM FOR RELIEF
(CAA/NESHAP/General Provisions: 40 C.F.R. § 61.12(c))
Failing to Operate and Maintain the Carbon Adsorption System
in a Manner Consistent with Good Air Pollution Control Practice

49. The allegations in Paragraphs 1 - 48, are realleged and incorporated herein by reference.

50. On numerous occasions from February 1, 2002, to the present, Von Roll failed to operate its carbon adsorption system in a manner consistent with good air pollution control practice for minimizing emissions, in violation of 40 C.F.R. § 61.12(c). Von Roll's failures included, *inter alia*, the failures described in Paragraph 47.

51. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Von Roll is subject to injunctive relief and civil penalties of: (i) up to \$27,500 per day for each violation of the NESHAP occurring between February 1,

2002, and March 15, 2004; and (ii) up to \$32,500 per day for each violation occurring on and after March 15, 2004.

THIRD CLAIM FOR RELIEF
(Benzene Waste Operations NESHAP: 40 C.F.R. § 61.343(a)(1))
Operating Waste Pit Tanks Without Fixed-Roofs

52. The allegations in Paragraphs 1 - 51, are realleged and incorporated herein by reference.

53. On and after Von Roll's January 31, 2002 certification of exemption from the Subpart CC requirements of 40 C.F.R. Part 265, Von Roll was required to operate its Waste Pit Tanks in compliance with the Benzene Waste Operations NESHAP.

54. Prior to February 10, 2003, the Benzene Waste Operations NESHAP required all tanks to be covered by a fixed roof.

55. For the period from February 1, 2002, through February 10, 2003, Von Roll operated its two Waste Pit Tanks without fixed roofs, in violation of 40 C.F.R. § 61.343(a)(1).

56. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Von Roll is subject to civil penalties of up to \$27,500 per day.

FOURTH CLAIM FOR RELIEF
(Benzene Waste Operations NESHAP: 40 C.F.R. § 61.343(e)(1))
Failing to Operate the Waste Pit Tanks
in Accordance with the Requirements of Procedure T in 40 C.F.R. § 52.741, Appendix B

57. The allegations in Paragraphs 1 - 56, are realleged and incorporated herein by reference.

58. On and after February 10, 2003, Von Roll's Waste Pit Tanks had to be located inside a "total enclosure" in order to comply with the tank standards of the Benzene Waste Operations NESHAP found at 40 C.F.R. § 61.343(e)(1). Pursuant to that provision, Von Roll was required to verify, initially and thereafter annually, that its tank enclosure constituted a "total enclosure" by using the criteria for a total enclosure specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure," found at 40 C.F.R. § 52.741 ("Procedure T").

59. Von Roll failed to verify that its enclosure constituted a "total enclosure" pursuant to Procedure T initially (that is, on or about February 10, 2003), in violation of 40 C.F.R. § 61.343(e)(1). Thereafter, in 2004 and 2005, Von Roll also failed to perform the verification procedure set forth in Procedure T, in violation of 40 C.F.R. § 61.343(e)(1).

60. For the period from February 10, 2003, through August 31, 2006, Von Roll operated its Waste Pit Tanks in violation of the requirements of Procedure T and 40 C.F.R. § 61.343(e)(1), by, *inter alia*, having natural draft openings in which the air flow was outward.

61. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding two Paragraphs, Von Roll is subject to civil penalties of: (i) up to \$27,500 per day for each violation of the NESHAP occurring between February 10, 2003, and March 15, 2004; and (ii) up to \$32,500 per day for each violation occurring on and after March 15, 2004.

FIFTH CLAIM FOR RELIEF
(RCRA: 40 C.F.R. §§ 265.1088(c)(3)(i); 265.1033(h)(1) and (2))
Failing to Replace Used Carbon with Fresh Carbon
in the Facility's Carbon Adsorption System

62. The allegations in Paragraphs 1 - 61, are realleged and incorporated herein by reference.

63. From at least January 1, 1999, through January 31, 2002, the Facility's Tanks were subject to the air emission standards for tanks found in 40 C.F.R. §§ 265.1085, 265.1088, and 265.1033.

64. On numerous occasions from January 1, 1999, to January 31, 2002, Von Roll failed to immediately replace existing carbon with fresh carbon when carbon breakthrough was indicated. In addition, at no time during that period did Von Roll replace existing carbon with fresh carbon at a regular, predetermined interval. By failing to either replace carbon immediately upon breakthrough or replace it at a regular, predetermined interval, Von Roll violated 40 C.F.R. §§ 265.1088(c)(3)(i) and 265.1033(h)(1) and (2).

65. In addition, as an alternative to allegations in the Third Claim for Relief, for the period from February 1, 2002, through December 4, 2003, Von Roll's Waste Pit Tanks likewise were subject to 40 C.F.R. §§ 265.1085, 265.1088, and 265.1033 because Von Roll's January 31, 2002 certification of compliance with Subpart FF was null and void. Specifically, the Waste Pit Tanks were not equipped with fixed roofs between February 1, 2002, and February 10, 2003, and were controlled by a carbon adsorption system between February 1, 2002, through December 4, 2003, thereby violating the Benzene Waste Operations NESHAP at 40 C.F.R. §§ 61.343(a)(1)

and 61.343(a)(2), and rendering Von Roll's certification of compliance with Subpart FF null and void.

66. On numerous occasions from February 1, 2002, to December 4, 2003, Von Roll failed to immediately replace existing carbon with fresh carbon when carbon breakthrough was indicated. In addition, at no time during that period did Von Roll replace existing carbon with fresh carbon at a regular, predetermined interval. By failing to either replace carbon immediately upon breakthrough or replace it at a regular, predetermined interval, Von Roll violated 40 C.F.R. §§ 265.1088(c)(3)(i) and 265.1033(h)(1) and (2).

67. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for each day of violation referred to in the preceding Paragraph, Von Roll is subject to civil penalties of up to \$27,500 per day.

SIXTH CLAIM FOR RELIEF
(RCRA: 40 C.F.R. § 265.1085(i))
Utilizing an Unauthorized Control Device on the Waste Pit Tanks

68. The allegations in Paragraphs 1 - 67, are realleged and incorporated herein by reference.

69. Von Roll's Waste Pit Tanks are tanks within an enclosure. From at least January 1, 1999, through January 31, 2002, Von Roll's Waste Pit Tanks were subject to the requirements of 40 C.F.R. § 265.1085(i).

70. From at least January 1, 1999, through January 31, 2002, Von Roll controlled emissions from the Waste Pit Tanks by utilizing a carbon adsorption system. Under RCRA, unless an exemption applies, carbon adsorption systems are not authorized as control devices for emissions from tanks within enclosures. 40 C.F.R. § 265.1085(i)(2). Unless an exemption

applies, only enclosed combustion devices designed and operated in accordance with the standards for either a vapor incinerator, a boiler, or a process heater may be used as control devices for tanks within enclosures. Id.

71. At no time between January 1, 1999, and January 31, 2002, did Von Roll's Waste Pit Tanks satisfy the conditions for exemption found at 40 C.F.R. §§ 265.1083(c)(5) or 265.1080(b)(7).

72. Von Roll's utilization of a carbon adsorption system as a control device for the Facility's Waste Pit Tanks from January 1, 1999, to January 31, 2002, violated 40 C.F.R. § 265.1085(i).

73. In addition, as an alternative to allegations in the Third Claim for Relief, for the period from February 1, 2002, through December 4, 2003, Von Roll's Waste Pit Tanks likewise were subject to 40 C.F.R. § 265.1085(i) because Von Roll's January 31, 2002 certification of compliance with Subpart FF was null and void. Specifically, the Waste Pit Tanks were not equipped with fixed roofs between February 1, 2002, and February 10, 2003, and were controlled by a carbon adsorption system between February 1, 2002, through December 4, 2003, thereby violating the Benzene Waste Operations NESHAP at 40 C.F.R. §§ 61.343(a)(1) and 61.343(a)(2), and rendering Von Roll's certification of compliance with Subpart FF null and void.

74. From at least February 1, 2002, through December 4, 2003, Von Roll controlled emissions from the Waste Pit Tanks by utilizing a carbon adsorption system. Under RCRA, unless an exemption applies, carbon adsorption systems are not authorized as control devices for emissions from tanks within enclosures. 40 C.F.R. § 265.1085(i)(2). Unless an exemption

applies, only enclosed combustion devices designed and operated in accordance with the standards for either a vapor incinerator, a boiler, or a process heater may be used as control devices for tanks within enclosures. Id.

75. At no time between February 1, 2002, and December 4, 2003, did Von Roll's Waste Pit Tanks satisfy the conditions for exemption found at 40 C.F.R. §§ 265.1083(c)(5) or 265.1080(b)(7).

76. Von Roll's utilization of a carbon adsorption system as a control device for the Facility's Waste Pit Tanks from February 1, 2002, to December 4, 2003, violated 40 C.F.R. § 265.1085(i).

77. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for each day of violation referred to in Paragraphs 72 and 76, Von Roll is subject to civil penalties of up to \$27,500 per day.

PRAYER FOR RELIEF

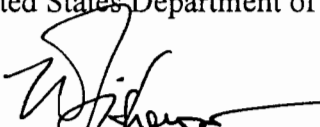
Wherefore, Plaintiff the United States of America respectfully requests that this Court:

1. Permanently enjoin Von Roll from further violations of the applicable provisions of the CAA and its implementing regulations;
2. Assess civil penalties for Von Roll's violations of the CAA, RCRA, and their implementing regulations of: (i) up to \$27,500 per day per violation occurring between January 1, 1999, and March 15, 2004; and (ii) up to \$32,500 per day per violation occurring on and after March 15, 2004.

3. Award costs and disbursements occurred herein; and
4. Grant such other relief as may be appropriate.

Respectfully Submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice



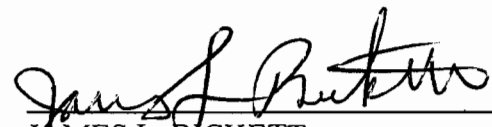
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