

170.0

- economic benefit maximal

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I

- raise issue of order resolving all liabilities prior to date of order on complaint consent

IN THE MATTER OF:

AVCO Corporation
Textron Lycoming
550 Main Street
Stratford, CT 06497
EPA ID Number CTD001181502
Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)

RCRA DOCKET NO: I-91-1078
Complaint, Order and Notice of Opportunity for Hearing

- responsible change
- making five cooperative indep. env. projects

COMPLAINT

This Complaint is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). The Complainant is the Regional Administrator, United States Environmental Protection Agency (EPA), Region I. The Respondent, AVCO Corporation - Textron Lycoming (Textron) is hereby notified of the Regional Administrator's determination that the Respondent has violated Subtitle C of RCRA, Sections 3002, 3004 and 3005, 42 U.S.C. §§ 6922, 6924 and 6925, the regulations promulgated thereunder, 40 C.F.R. Parts 262, 265 and 268, and the Regulations of Connecticut State Agencies, Hazardous Waste Management Regulations ("RCSA") 22a-449(c) et seq.

STATUTORY AND REGULATORY BACKGROUND

1. EPA granted the State of Connecticut Phase I and Phase II interim authorization, pursuant to Section 3006(c) of RCRA, 42

U.S.C. § 6926(c), on April 21, 1982 and June 29, 1983, respectively, to administer, through the Connecticut Department of Environmental Protection (CT DEP), a state hazardous waste program. The State of Connecticut did not receive final authorization pursuant to Section 3006(b) of RCRA by January 31, 1986 and therefore the interim authorization expired pursuant to Section 3006(c) of RCRA, 42 U.S.C. § 6926(c). EPA made public notice of the reversion of the Connecticut hazardous waste management program to the EPA in the Federal Register (51 FR 4128), on the above-mentioned date. As a result, EPA's rather than the State of Connecticut's became the relevant requirements in Connecticut for generators of hazardous waste and for facilities for the treatment, storage and disposal of hazardous wastes after January 31, 1986.

2. On August 1, 1990, the State of Connecticut submitted an application for final authorization. EPA approved this application, with conditions. The State of Connecticut complied with these conditions and final authorization became effective on December 31, 1990, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

3. On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments (HSWA) to RCRA. Among other things, these Amendments require EPA to evaluate all RCRA listed and characteristic hazardous wastes according to a strict

schedule to determine which wastes should be restricted from land disposal. For wastes that are restricted, HSWA requires EPA to set levels or methods of treatment that substantially diminish the toxicity of these wastes or substantially reduce the likelihood that hazardous constituents from these wastes will migrate from the disposal site. After the dates specified in the schedule, restricted wastes that do not meet the treatment requirements are prohibited from land disposal.<sup>1</sup>

4. As of the date of the violation(s) cited in this Complaint, the State of Connecticut had not received authorization from EPA to administer its hazardous waste management program or a state analog to the federal land disposal restrictions. As a result, EPA is the only agency with authority to enforce the base RCRA

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<sup>1</sup> On November 7, 1986, EPA published in the Federal Register (51 FR 40572) a final rule restricting the land disposal of solvent (F001-F005) and dioxin (F020-F023, F026-F028) wastes. On July 8, 1987, EPA published in the Federal Register (52 FR 25760) a final rule restricting the land disposal of liquid hazardous wastes containing specified levels of certain metals, PCBs, and/or cyanides, and/or which have a pH  $\leq$  2, and liquid and non-liquid hazardous wastes containing specified concentrations of halogenated organic compounds. These restricted wastes are collectively referred to as the "California list" wastes. On August 17, 1988, EPA published in the Federal Register (53 FR 31138) a final rule restricting the land disposal of the first one third of the hazardous wastes listed in 40 C.F.R. Part 261, "listed hazardous wastes". On June 23, 1989, EPA published in the Federal Register (54 FR 26594) a final rule restricting the land disposal of the second one third of the listed hazardous wastes. On June 1, 1990, EPA published in the Federal Register (54 FR 22520) a final rule restricting the land disposal of the third one-third of the listed hazardous wastes as well as the characteristic hazardous wastes (EPA Hazardous Waste Nos. D001-D017) and multi-source leachate (EPA Hazardous Waste No. F039). These provisions were further amended on January 31, 1991 in the Federal Register (55 FR 3864).

program and land disposal restrictions provisions for the cited violations, and the applicable requirements are the federal requirements.

#### FINDINGS

5. Respondent is incorporated under the laws of Delaware and operates a facility for the manufacture of gas turbine aircraft engines at 550 Main Street, Stratford, Connecticut. Respondent is a wholly owned subsidiary of Textron, Inc.
6. On August 15, 1980, Respondent submitted to EPA the preliminary notification required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), identifying itself as a generator of hazardous waste and as a treatment, storage and disposal facility for hazardous wastes.
7. On November 11, 1980, Respondent submitted to EPA Part A of a hazardous waste permit application for its Stratford facility, as required by 40 C.F.R. § 270.10(e)(1).
8. On November 25, 1985, Respondent submitted to EPA an amended Part A application.
9. On the basis of Respondent's notification and Part A application, the Stratford facility qualified for interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

10. Wastes generated at the facility are restricted from land disposal under Section 3004 of RCRA, 42 U.S.C. § 6924, and 40 C.F.R. Part 268.

11. As a generator and treatment, storage and disposal facility of hazardous wastes, Respondent was subject, at the times relevant hereto, to the generator and interim status facility requirements of 40 C.F.R. Parts 262 and 265 and the land disposal restrictions of 40 C.F.R. Part 268.

12. During an inspection of Respondent's facility on June 5-8, 1990, by representatives of the CT DEP and EPA, the following violations were identified:

A. Failure to label or mark drums and other containers in the less than 90 day hazardous waste storage area and a tank in the adjacent tank farm accumulating hazardous waste with the words "hazardous waste" as required by 40 C.F.R.

§ 262.34(a)(3). Specifically, at least thirty-two (32) drums and several containers containing hazardous waste in the less than 90 day hazardous waste storage area and one (1) tank in the adjacent tank farm accumulating hazardous waste were not labelled or marked with the words "hazardous waste."

*- plant-wide clean up  
- which drums  
- how do they know haz waste  
w tank  
ask for EPA unimpd report*

B. Failure to have the date upon which each period of accumulation begins clearly marked and visible for inspection on each container, as required by 40 C.F.R.

§ 262.34(a)(2). Specifically, dates of accumulation were not clearly visible on at least thirty-two (32) drums and several containers containing hazardous waste in the less than 90 day hazardous waste storage area.

C. Storage of hazardous waste on site for greater than 90 days in a less than 90 day storage area, in violation of 40 C.F.R. § 262.34. Specifically, within the left (or North) bay of the less than 90 day storage area, two (2) drums marked EPA Hazardous Waste No. D001 - liquid were being stored. Based on the date marked on the drums, October 1, 1989, the drums had been stored on site for approximately 160 days beyond the 90 day regulatory limit.

*preparation  
marking*

*plant work  
clean-up  
have worked  
it*

D. Failure to maintain sufficient aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment in the less than 90 day hazardous waste storage area in an emergency, as required by 40 C.F.R. § 265.35, as applied through 40 C.F.R. § 262.34. Specifically, approximately one hundred drums were observed crowded together such that the inspectors could not gain access to a number of drums in the less than 90 day hazardous waste storage area located adjacent to the tank farm and east of building 15.

E. Failure to make hazardous waste determinations upon the generation of solid wastes, in accordance with 40 C.F.R.

§ 262.11. Specifically,

*- repeat response to info request*

i) Respondent shipped waste oil containing chlorinated solvents, as a Connecticut (CT) regulated waste rather than as an EPA Hazardous Waste on at least six (6) instances. In 1988, four (4) CT manifests nos. CTC0187623 (9/23/88), CTC0187026 (9/23/88), CTC0187031 (9/22/88) and CTC0191966 (12/21/88) document the shipment of waste oil to Hitchcock Gas Engine of Bridgeport, CT. The code "CR02" was typed on each of these manifests. The work orders for these shipments indicate that each shipment consists of combustible liquid waste oil contaminated with chlorinated solvents. F001 is the applicable EPA Hazardous Waste Number. Analytical results provided by Hitchcock Gas Engine indicate chlorine levels in excess of 4,000 ppm in each of these shipments. Chlorine is a halogen. Used oil containing more than 1,000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Part 261, Subpart D. See 40 C.F.R. § 266.40(c).

ii) In 1989, manifests for waste oil shipped to Hitchcock Gas Engine of Bridgeport, CT were coded as a Connecticut regulated waste, "CR02." F001 is the applicable EPA Hazardous Waste Number. On manifests

CTC0224651 (2/8/89) and CTC0138957 (7/13/89), the wastes were listed on the manifests as "non-RCRA hazardous." The work orders from Hitchcock Gas indicate that these shipments consist of combustible liquid described as waste oil contaminated with chlorinated solvents. Analytical results provided by Hitchcock Gas Engine indicate chlorine levels in excess of 6,000 ppm in each of these shipments. Chlorine is a halogen. Used oil containing more than 1,000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 C.F.R. Part 261, Subpart D. See 40 C.F.R. § 266.40(c)

F. Failure to comply with the personnel training requirements for hazardous waste management. Specifically, Respondent failed to:

i) maintain written job descriptions for each position related to hazardous waste management, in accordance with 40 C.F.R. § 265.16(d)(2). At the time of the inspection, waste handler/mover job descriptions did not include their activities in hazardous waste management;

ii) keep written descriptions of the types and amount of both introductory and continuing training that will be given to each person filling a position relating to



hazardous waste management, in accordance with 40 C.F.R. § 265.16(d)(3). During the joint EPA and CT DEP inspection, inspectors were provided with a copy of the training manual which the Environmental Director said was utilized for training, but there was no documentation on file regarding the type of training conducted based on this manual, or the amount of training to be given each employee; and

iii) ensure that facility personnel take part in an annual review of initial training in hazardous waste management, as required by 40 C.F.R. § 265.16(c). Specifically, a review of training records present at the facility indicated that Bill Goodman and John Fleming had not been trained since May 1989.

G. Failure to specify treatability groups or treatment standards on twelve (12) notifications for LDR regulated wastes as required by 40 C.F.R. § 268.7(a)(1)(ii). Specifically,

i) For the manifests listed below, which document the shipment of EPA Hazardous Wastes with the codes F001, F002 and F003, the accompanying LDR notifications indicate that the land disposal of these hazardous wastes is "banned at any level," or "prohibited at any level," rather than indicating a numeric treatment standard, as required by 40 C.F.R.

*confirm facts*

§ 268.7(a)(1)(ii). The eight (8) manifests which document shipment of an EPA Hazardous Waste with the code F001 are as follows: CTC0138958 (07/20/89), CTC0138968 (01/23/90), CTC0201602 (01/25/90), CTC0138969 (02/08/90), CTC0201601 (01/25/90), CTC0138966 (08/24/89), CTC0138949 (06/07/89), and CTC0138942 (05/05/89). The two (2) manifests which document the shipment of an EPA Hazardous Waste with the code F002 are as follows: CTC0138974 (09/07/89) and CTC0138995 (11/20/89). One (1) manifest, CTC0201619 (04/05/90), documents the shipment of EPA Hazardous Wastes with the codes F001 and F003.

*Fact matter*

ii) Manifest CTC0138931 (2/27/89) documents the shipment of 165 gallons of an EPA Hazardous Waste with the code F001. An LDR notification was attached; however, this notification did not specify the appropriate treatment standard, as required by 40 C.F.R. § 268.7(a)(1)(ii).

H. Failure to send LDR notifications as required by 40 C.F.R. § 268.7(a). The following seven (7) manifests reviewed during inspection of the facility did not have LDR notifications attached, as required by 40 C.F.R. § 268.7(a): CTC0124185 (01/12/90, F008 to Stablex Canada), CTC0276275 (11/16/89, F002 to Stablex, RI), CTC0138967 (11/01/89, F001

*did report matter resolved*

to Hamden Color and Chemical), CTC0138987 (10/16/89, F008 to Stablex, Canada), CTC0138948 (06/02/89, F008 to Stablex, Canada), CTC0138050 (02/16/89, F008 to Stablex, Canada), and CTC0138048 (01/27/89, F008 to Stablex, Canada).

I. Failure to inspect areas where containers containing hazardous wastes are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors, as required by 40 C.F.R. § 265.174, as applied through 40 C.F.R. § 262.34(a)(1). Specifically, a review of available inspection logs present on site as well as a review of information submitted after the joint EPA and CT DEP inspection revealed the following:

*done but not recorded*

- i) For the calendar year 1990, Respondent failed to conduct twelve (12) required weekly container inspections at hazardous waste container storage areas.
- ii) For the calendar year 1989, Respondent failed to conduct fifteen (15) required weekly container inspections at hazardous waste container storage areas.

*minor, made note?*

**ORDER**

Based on the foregoing findings, Respondent is hereby ORDERED to comply with the following requirements:

1. Within thirty (30) calendar days of receipt of this Complaint, Respondent shall provide EPA with a copy of its

written procedures to ensure that future shipments of wastes are correctly classified, in accordance with 40 C.F.R. § 262.11, as required by RCSA 22a-449(c)-102.

2. Within thirty (30) calendar days of receipt of this Complaint, Respondent shall maintain personnel training records which clearly indicate all job descriptions for positions related to hazardous waste management and descriptions of the types and amount of introductory and continuing training for each person filling a position related to hazardous waste management, in accordance with 40 C.F.R. §§ 265.16(d)(2) and 265.16(d)(3), respectively, as required by RCSA 22a-449(c)-105. Respondent shall submit to EPA a copy of the aforementioned records. In addition, Respondent shall provide EPA with documentation supporting its claim that Mr. Goodman and Mr. Fleming attended annual hazardous waste training following the joint EPA and CT DEP inspection of Textron on June 5-8, 1990. See 40 C.F.R. § 265.16(c) and RCSA 22a-449(c)-105.

3. Within thirty (30) calendar days of receipt of this Complaint, Respondent shall provide EPA with a sample of the type of notification which will be sent to treatment, storage or disposal facilities to indicate that the hazardous wastes are prohibited and/or restricted from land disposal. See 40 C.F.R. § 268.7 and RCSA 22a-449(c)-110.

4. Immediately upon receipt of this Complaint, Respondent shall cease the shipment of all Land Disposal Restricted wastes without proper notification, in accordance with 40 C.F.R. § 268.7(a)(1) and RCSA 22a-449(c)-110.

5. Immediately upon receipt of this Complaint, Respondent shall comply with the requirements for the storage of hazardous waste within less than 90 day storage areas, in accordance with 40 C.F.R. § 262.34, as required by RCSA 22a-449(c)-102.

6. Immediately upon receipt of this Complaint, Respondent shall comply with the requirements for aisle space within the less than 90 day storage areas, in accordance with 40 C.F.R. § 265.35, as applied through 40 C.F.R. § 262.34, and required by RCSA 22a-449(c)-102.

7. Within thirty (30) days of receipt of this Complaint, Respondent shall submit to EPA written certification of its compliance with Paragraphs 1-6 above, accompanied by a copy of any appropriate supporting documentation.

8. The information required by this paragraph is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

9. Respondent shall submit the above requested information

and notices required by this Complaint to:

Director, Waste Management Division  
U.S. Environmental Protection Agency (HRW-CAN3)  
Waste Management Division  
John F. Kennedy Federal Building  
Boston, Massachusetts 02203-2211  
ATTN: RCRA Support Section, Enforcement Unit

10. If Respondent fails to comply with the requirements of this Complaint within the time specified, § 3008(c) of RCRA provides for further enforcement action in Federal District Court in which EPA may seek the imposition of additional penalties of up to \$25,000 for each day of continued non-compliance.

11. This Complaint shall become effective immediately upon receipt by Respondent.

#### ASSESSMENT OF PENALTY

Based on the nature, circumstances, extent and gravity of the above-cited violations, including the seriousness of the violation and any good faith efforts to comply with applicable requirements, a civil penalty in the amount of \$265,417 is hereby assessed against the AVCO Corporation - Textron Lycoming. The provisions violated and the corresponding penalties are as follows:

<u>Provisions Violated</u>	<u>Requirement</u>	<u>Penalty</u>
40 C.F.R. § 262.34(a)(3)	Failure to Label Hazardous Waste	\$ 18,375
40 C.F.R. § 262.34(a)(2)	Failure to Have The Date Upon Which Each Period of Accumulation Begins Clearly Marked and Visible For Inspection On Each Container	\$ 18,375
40 C.F.R. § 262.34	Storage of Waste on Site For > 90 Days in a Less Than 90 Day Storage Area	\$ 4,274
40 C.F.R. § 265.35, through § 262.34	Failure to Maintain Adequate Aisle Space	\$ 18,375
40 C.F.R. § 262.11	Failure to Make Hazardous Waste Determinations Upon Generation of Solid Waste	\$ 48,737
40 C.F.R. § 265.16(c), (d)(2) and (d)(3)	Inadequate Personnel Training	\$ 7,761
40 C.F.R. § 268.7(a)(1)	Failure to Specify LDR Treatment Standards	\$ 1,470
40 C.F.R. § 268.7(a)	Failure to Submit LDR Notifications	\$ 42,525
40 C.F.R. § 265.174, through 262.34(a)(1)	Failure to Complete Weekly Inspections	\$105,525
Total:		\$265,417

Payment may be made by cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (RCRA Docket No. I-91-1078). The check should be forwarded to:

EPA - Region I  
P.O. Box 360197M  
Pittsburgh, PA 15251

### OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

As provided by Section 3008(b) of RCRA and in accordance with 5 U.S.C. § 554, Respondent has a right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint. In its answer, Respondent may contest any material fact contained in the Complaint or the appropriateness of the amount of penalty. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of that allegation. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. The penalty assessed in the Complaint shall become due and payable by



Respondent without further proceedings sixty (60) days after a final order issued on default.

#### SETTLEMENT CONFERENCE

Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations and/or the amount of penalty.

Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Where appropriate, the amount of the penalty may be modified to reflect any settlement agreement reached at such a conference. In addition, where circumstances so warrant, a recommendation that any or all of the charges be dropped may be made to the Regional Administrator. Any settlement shall be made final by the issuance of a written Consent Agreement and Order by the Regional Administrator, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, discretion, or assessed penalties included in the Agreement.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should

contact William L. Parker, Office of Regional Counsel, EPA Region  
I, at (617) 565-3699.

Paul M. Keogh, Acting  
Julie Belaga,  
Regional Administrator

June 28, 1991  
Date

At: Boston, Mass.