
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

NICHOLAS A. DI PASQUALE,)
Secretary of the Department of)
Natural Resources and)
Environmental Control, an)
Administrative Agency of the)
State of Delaware,)

Plaintiff,)

v.)

METACHEM PRODUCTS, L.L.C.,)
a Delaware Limited Liability)
Corporation and GODEL, INC.)
(formerly STANDARD CHLORINE OF)
DELAWARE, INC.) a Delaware)
Corporation,)

Defendants.)

C.A. No. _____

**NON-ARBITRATION
STATUTORY PENALTY CASE**

VERIFIED COMPLAINT

PARTIES

1. Plaintiff is Secretary of the Department of Natural Resources and Environmental Control (“DNREC” or “Department”), and as such has primary responsibility for the administration and enforcement of the air quality laws of the State of Delaware pursuant to 7 Del. C. Ch. 60 and the Delaware Regulations Governing the Control of Air Pollution promulgated thereunder.

2. Defendant Metachem Products (“Metachem”), a limited liability corporation, is incorporated in, and has its principal place of business in, the State of Delaware.

3. Defendant Godel, Inc. (“Godel”), is incorporated in the State of Delaware and was formerly known as Standard Chlorine of Delaware, Inc. (“Standard Chlorine”).

4. This Court has jurisdiction over this case pursuant to 7 Del. C. §6005(b)(1).
5. Metachem owns and operates an industrial facility located in Delaware City, New Castle County, Delaware, which includes a paradichlorobenzene (“pDCB”) flaking process.
6. Prior to December, 1998, operations were conducted at the site by Standard Chlorine.
7. Seven Del. C. §6003(b)(1) provides: “[n]o person shall, without first having obtained a permit from the Secretary, construct, install, replace modify or use any equipment or device or other article: (1) Which may cause or contribute to the discharge of an air contaminant”. 7 Del. C. §6003(b)(1).
8. On October 31, 1995, pursuant to Seven Del. C. §6003(b)(1), Standard Chlorine received Permit APC-94/0903-Construction (VOC RACT) from the Department for the construction of a Venturi Scrubber (“Construction Permit”) to control the emissions of pDCB from its flaking process.
9. Seven Del. C. §6003(a)(1) provides: “[n]o person shall, without first having obtained a permit from the Secretary, undertake any activity: (1) In a way which may cause or contribute to the discharge of an air contaminant”. 7 Del. C. §6003(a)(1).
10. On December 16, 1996, pursuant to Seven Del. C. §6003(a)(1), Standard Chlorine received APC-94/0903-Construction (VOC RACT) from the Department for the operation of the Venturi Scrubber (“Operation Permit”) to control the emissions of pDCB from its flaking process.
11. On or about December 2, 1998, Metachem acquired Standard Chlorine and assumed operation of the Delaware City facility.
12. By a letter dated December 8, 1998, Robert J. Touhey, Vice President of Standard Chlorine, requested that the Department transfer the Air Pollution Control Permits held by Standard Chlorine to Metachem.

13. On or about December 18, 1998, Standard Chlorine changed its name to Godel, Inc.

14. On February 10, 1999, the Air Pollution Control Permits held by Standard Chlorine were transferred by the Department to Metachem.

COUNT I

15. The allegations in paragraphs 1 through 14 are incorporated herein.

16. Condition 1(c) of the Operation Permit states in part: “Actual Emission Rate shall be determined and a limit shall be established based on the stack test results approved by the Department.”

17. Condition 11 of the Operation Permit states in part: “Within 180 days from the date of this permit is issued, the Company shall conduct the stack test required in Condition 1(c), and furnish to the Department with a written report of the results of the test.”

18. No stack tests were conducted in accordance with the Operation Permit until Metachem did a stack test on the pDCB flaker process on March 7, 2000.

19. Metachem breached Condition 11 of its Operation Permit from February 10, 1999, through March 6, 2000, by failing to conduct a stack test on its pDCB flaker process.

IN THE ALTERNATIVE, if Metachem assumed the responsibilities and liabilities of Standard Chlorine under the Operation Permit when it acquired Standard Chlorine’s assets, Metachem, and Metachem through Standard Chlorine, breached Condition 11 of the Operation Permit from June 15, 1997, through March 6, 2000, by failing to conduct a stack test on its pDCB flaker process.

20. Godel, operating as Standard Chlorine, breached Condition 11 of its Operation Permit from June 15, 1997, through February 9, 1999, by failing to conduct a stack test on its pDCB flaker process.

IN THE ALTERNATIVE, if Metachem assumed the responsibilities and liabilities

of Standard Chlorine under the Operation Permit when it acquired Standard Chlorine's assets, Godel is responsible for the breaches of Condition 11 of the Operation Permit to the extent provided for in the acquisition of Standard Chlorine by Metachem.

21. Breaches of any condition of a permit issued pursuant to 7 Del. C. §6003 are punishable under 7 Del. C. §6005.

22. Pursuant to 7 Del. C. §6005(b)(1), each day of continued violation shall be considered a separate violation.

COUNT II

23. The allegations in paragraphs 1 through 22 are incorporated herein.

24. Condition 1(a) of the Operation Permit states: "Air contaminant emission levels shall not exceed those specified in the State of Delaware 'Regulations Governing the Control of Air Pollution.'"

25. Regulation Number 24, Section 50, subsection (b) of the Regulations Governing the Control of Air Pollution was promulgated on November 29, 1994, and requires the owner or operator of any source at a facility subject to the section to achieve an overall reduction in Volatile Organic Compounds ("VOCs") emissions of at least 81 percent by no later than May 31 of 1995.

26. The facility is subject to the requirements of Regulation Number 24, Section 50, since paradichlorobenzene is a Volatile Organic Compound as the term is defined by Regulation Number 24, Section 2, subsection (uuu) of the Regulations Governing the Control of Air Pollution.

27. According to the results of the March 7, 2000 stack testing conducted by Metachem, and as reported to the Department, the average reduction of the pDCB VOCs by the Venturi Scrubber was eight percent (8%).

28. On September 21, 2000, the Department issued permit APC-94/0903 Construction/Operation Temporary (VOC/RACT) for the installation and operation of a carbon

absorption unit theoretically providing 99% removal.

29. On or about September 21, 2000, Metachem installed and began to operate the carbon absorption unit.

30 Metachem violated Regulation Number 24, Section 50, subsection (b) by failing to obtain 81 percent removal of VOCs from December 2, 1998, through September 21, 2000.

IN THE ALTERNATIVE, if Metachem assumed the responsibilities and liabilities of Standard Chlorine under the Operation Permit when it acquired Standard Chlorine's assets, Metachem, and Metachem through Standard Chlorine, violated Regulation Number 24, Section 50, subsection (b) by failing to obtain 81 percent removal of VOCs from December 16, 1996 through September 21, 2000.

31. Godel, operating as Standard Chlorine, violated Regulation Number 24, Section 50, subsection (b) by failing to obtain 81 percent removal of VOCs from December 16, 1996, through December 2, 1998.

IN THE ALTERNATIVE, if Metachem assumed the responsibilities and liabilities of Standard Chlorine under the Operation Permit when it acquired Standard Chlorine's assets, Godel is responsible for the violation of Regulation Number 24, Section 50, subsection (b) to the extent provided for in the acquisition of Standard Chlorine by Metachem.

32. Violations of any regulation promulgated under 7 Del. C. §6003 are punishable under 7 Del. C. §6005.

33. Pursuant to 7 Del. C. §6005(b)(1), each day of continued violation shall be considered a separate violation.

WHEREFORE, Plaintiff seeks the following relief:

1. Judgment against Defendants Metachem Products L.L.C. and Godel, Inc. in accordance with 7 Del. C. §6005(b)(1), for a civil penalty of not less than One Thousand and no/100 (\$1,000), nor more than Ten Thousand and no/100 Dollars (\$10,000), for each day of violation of Counts One and Two;

2. That court costs be paid by Defendants; and

3. Any other relief the Court deems appropriate.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

Dated: _____

Keith A. Trostle *I.D. No. 432*
Deputy Attorney General

Matthew P. Chesser *Rule 55*
Assistant Deputy Attorney General

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Attorneys for Plaintiff

2. I have read the foregoing Verified Complaint, and believe the factual allegations contained therein are true and correct to the best of my knowledge, information, and belief.

Robert J. Taggart, Program Manager II
Air Quality Management Section
Division of Air and Waste Management
Department of Natural Resources and
Environmental Control

SWORN TO AND SUBSCRIBED before me this ____ day of _____,
2000.

Notary Public

My Commission Expires: _____

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