

U.S. Department of Justice

*United States Attorney's Office
District of Delaware
Chase Manhattan Centre
1201 Market Street, Suite 1100
Post Office Box 2046
Wilmington, Delaware 19899-2046*



copy

MEMORANDUM

302/573-6277 (FAX) 302/573-6220

DATE: **June 16, 1999**

SUBJECT: **Standard Chlorine**

TO: **Robert Lefevre**
Environmental Enforcement
Section
Environmental and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 616-6583

FROM: **Patricia C. Hannigan**
Assistant United States Attorney

Judy Hykel
U.S. Environmental
Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2603

Alice Chow
U.S. Environmental
Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2134

6/25/99 letter to Judge McKelvie from AUSA Hannigan re expiration of 30-day
public period

Signed Consent Decree



U.S. Department of Justice

United States Attorney's Office
District of Delaware

Chase Manhattan Center
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

(302) 373-6277
FAX (302) 373-6220

June 25, 1999

Via Hand Delivery

The Honorable Roderick R. McKelvie
United States District Judge
J. Caleb Boggs Federal Building
844 King Street
Wilmington, Delaware 19801

**RE: United States v. Standard Chlorine
Civil Action No. 98-268-RRM**

Dear Judge McKelvie:

I write to advise the Court that the thirty day public comment period relative to the proposed Consent Decree in the referenced case has expired. I enclose as Exhibit A-1 through A-25 copies of all comments received by the government. As Your Honor will see, all comments but one come from Ms. Marilyn Harmer, who is a resident living in the vicinity of the facility at issue in this case. In summary, Ms. Harmer alleges that the facility has for many years been the source of dangerous emissions, in violation of the Clean Air Act. The additional comment is from Ms. Barbara Bason, also a nearby resident, also to the effect that Standard Chlorine has engaged in improper toxic emissions.

The objections raised in these comments regarding the entry of the proposed Consent Decree have been reviewed by technical staff at the Environmental Protection Agency ("EPA"). They advise me that Ms. Harmer has provided no measurable evidence of improper emissions by the Defendant, and that EPA's investigation of her claims has not lead to any proof of improper emissions. I enclose as Exhibit B the responses that have been made directly to Ms. Harmer since 1996.

The Complaint in this matter alleges violations of record keeping requirements designed to prevent fugitive emissions (equipment leaks) that contribute to overall emissions of the type Ms. Harmer alleges. Shortly before the Consent Decree was lodged, and following the sale of Standard Chlorine's assets, EPA conducted an investigation of the facility under the new

The Honorable Roderick R. McKelvie

June 25, 1999

2

ownership and concluded that the record keeping violations that form the basis of the Complaint in this case had been substantially corrected.

Based upon EPA's evaluation that the complaints raised in the public comment period are unsupported by evidence available through Ms. Harmer or its own investigation, it is our request that the Court enter the Consent Decree as lodged. Accordingly, I have today filed Plaintiff's Motion for Entry of Consent Decree. I understand from Mr. Scaggs, counsel for the Defendant, that the Defendant concurs with this request.

If the Court would find helpful any further information, we will be happy to comply. In addition, counsel are, of course, available if the Court has questions or comments.

Respectfully,

CARL SCHNEE
United States Attorney

BY: 

Patricia C. Hannigan
Assistant United States Attorney

PCH:clm

cc: R. J. Scaggs, Jr., Esquire (via hand delivery)
Robert Lefevre, Esquire, U.S. Department of Justice, Washington, D.C. (Via facsimile)
Judy Hykel, Esquire, EPA, Philadelphia, PA (Via facsimile)
Clerk, U.S. District Court (via hand delivery)
Ms. Marilyn Harmer
Ms. Barbara Bason

18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STANDARD CHLORINE OF
DELAWARE, INC.

Defendant.

CIVIL ACTION NO. 98-268-RRM

CONSENT DECREE

1. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a civil Complaint alleging that Standard Chlorine of Delaware ("SCD") violated the Clean Air Act, 42 U.S.C. §§ 7401-7671q, at a manufacturing plant in Delaware City, Delaware ("the Facility"); and

2. Whereas, the Complaint in this matter alleged that SCD violated certain requirements under the Clean Air Act regarding hazardous air pollutants and stratospheric ozone protection at the Facility; and

3. Whereas, during the pendency of this litigation, SCD sold the Facility to a non-party to this action; and

4. Whereas, effective on December 18, 1998, SCD changed its name to Godel, Inc. ("Godel"); and

5. Whereas, on January 13, 1999, EPA conducted an inspection of the Facility; and

6. Whereas, the parties have consented to the entry of this Consent Decree without

trial of any issues, and hereby agree that settlement of this matter is in the public interest, and that entry of this Consent Decree without further litigation is appropriate; and

7. Whereas, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith, will avoid litigation between the parties, and is fair, reasonable, and in the public interest; and

8. Whereas, settlement and entry of this Consent Decree does not constitute an admission of liability by Godel or adjudication by the Court of any issue of fact or law, but is solely intended to settle disputed claims alleged in the Complaint filed in this action;

NOW, THEREFORE, it is HEREBY ORDERED, ADJUDGED, and DECREED as follows:

I. GENERAL PROVISIONS

9. Jurisdiction. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Consent Decree under 28 U.S.C. §§ 1331, 1345, and 1355, and 42 U.S.C. § 7413(b). Godel waives any and all objections it may have to the Court's jurisdiction and, for purposes of entry of this Consent Decree and the enforcement thereof, agrees to submit to the Court's jurisdiction.

10. Venue. Venue is proper in this District under 42 U.S.C. § 7413(b) and 28 U.S.C. § 1391(b).

11. Parties Bound. Pursuant to Federal Rule of Civil Procedure 65(d), this Consent Decree is binding upon the parties to the action, their officers, agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of the Consent Decree by personal service or otherwise.

12. Effective Date of Obligations. Godel's obligations under this Consent Decree shall commence upon entry of this Consent Decree. Any requirement of this Consent Decree that requires performance by Godel on a date prior to the entry of this Consent Decree shall, upon entry of this Consent Decree, be binding retroactively and Godel shall be liable for stipulated penalties for failure to meet any such requirement.

13. Certification of Signatory for Godel. The undersigned representative of Godel certifies that he is fully authorized by Godel to enter into the terms and conditions of this Consent Decree and to execute and legally bind Godel to it.

14. Notifications. When written notification or communication is required by the terms of this Consent Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Reference Case No. 90-5-2-1-2109

United States Attorney's Office
District of Delaware
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, DE 19899-2046

Regional Counsel (3RC00)
United States EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Attn: Charles McPhedran

Air Protection Division (3AP00)
United States EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Attn: Alice Chow

As to Godel:

R. Judson Scaggs, Esq.
Morris, Nichols, Arsht & Tunnell
1201 Market Street
P.O. Box 1347
Wilmington, DE 19899-1347

Godel, Inc.
1035 Belleville Turnpike
Kearny, NJ 07032
Attn: Margaret W. Kelly,
Vice President/General Counsel

15. Definitions. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the regulations promulgated thereunder.

16. Costs of Suit. Each party shall bear its own costs and attorneys' fees incurred prior to entry of the Consent Decree in this action. In any action to enforce this Consent Decree in which the United States substantially prevails, Godel shall pay the attorneys' fees and costs of the United States.

17. Modification. Except as provided for herein or by action of this Court, there shall be no modification of this Consent Decree without written agreement of all the parties to this Consent Decree and approval by the Court.

18. Public Notice. The parties acknowledge and agree that the final approval and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least thirty (30) days in which to make any comments. Under 28 C.F.R. § 50.7, the United States may withhold or withdraw its consent to this Consent Decree based on such comments. In the event that the United States withdraws its consent to this Consent Decree, or if the Court fails to enter this Consent Decree in whole or in part, then this Consent Decree will become null and

void.

19. Waiver of Challenge to Entry. Godel agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

20. Designation of Agent for Service. Godel shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Godel agrees to accept service in that manner and to waive the formal service requirements of Federal Rule of Civil Procedure 4 and any applicable local rules of this Court, including but not limited to service of summons.

21. Retention of Jurisdiction. Jurisdiction is retained by this Court for the purposes of issuing such further orders and directions as may be necessary and appropriate for the carrying out or modification of this Consent Decree, for Dispute Resolution petitions filed, and for enforcing compliance with the provisions of this Consent Decree.

22. Termination. This Consent Decree shall terminate when the penalty provided for in paragraph 23 of this Consent Decree (along with interest and stipulated penalties, if any, for late payment) has been paid. The United States shall file a Notice of Termination with the Court, with service upon Godel, within a reasonable time period following payment of all money due under this Consent Decree, which shall state that all money due under this Consent Decree has been paid and the date of receipt by the United States.

II. CIVIL PENALTY

23. Payment of Penalty. Within twenty (20) days of entry of this Consent Decree by the District Court, Godel shall pay the sum of three hundred and forty-nine thousand, five

hundred dollars (\$349,500) in civil penalty to the United States by Electronic Funds Transfer as directed below in paragraph 26. For the purposes of entering into this Consent Decree, the payment of this civil penalty shall be in satisfaction of the United States' claims for civil penalties under 42 U.S.C. §§ 7412, 7671g and 40 C.F.R. Parts 63 and 82 for the violations alleged in the Complaint filed in this action.

24. Penalties Not Deductible. The payments made pursuant to this Consent Decree are penalties within the meaning of 26 U.S.C. § 162(f).

25. United States is Judgment Creditor. The United States shall be deemed a judgment creditor for purposes of collection of penalties required by this Consent Decree.

26. Payment Method. All payments of civil and stipulated penalties shall be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank referencing DOJ case number 90-5-2-1-2109. Payment shall be made in accordance with instructions that have been provided by the United States Attorney's Office for the District of Delaware. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. Upon payment, Godel shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the United States and to EPA in accordance with paragraph 14 above and to the following additional addressee at EPA:

Regional Docket Clerk (3RC00)
United States EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

27. Interest. Payments required to be made under this Consent Decree but not paid

when due shall accrue interest at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717, beginning thirty (30) days from the due date. If interest is due, Godel shall submit a statement with the payment setting forth the calculation of interest. The United States Attorney's Office will advise Godel in the event such calculation requires adjustment.

28. Stipulated Penalties. In addition to any other remedies that may be available to the United States if Godel fails to comply with any provision of this Consent Decree including, without limitation, statutory or regulatory penalties, injunctive relief, criminal sanctions, or contempt, if Godel fails to make the penalty payment required under paragraph 22 of this Consent Decree on or before the date that it is due, Godel shall pay a stipulated penalty of one thousand dollars (\$1,000) per day beginning on the fourth day after the due date until the penalty is paid in full, in addition to accrued interest in accordance with the statutory judgment interest rate provided for in 33 U.S.C. § 3717.

29. Reservations of Rights. By entering into this Consent Decree, Godel hereby settles all civil claims that the United States has alleged against Godel in the Complaint. The United States expressly reserves, however, the right to pursue all remedies available for violations of any federal or state laws and regulations not specifically pleaded in the Complaint filed in this matter, including, but not limited to, the following specific reservations:

- a. Nothing herein shall be construed to limit the right of United States to undertake any criminal enforcement activity against any person, including Godel.
- b. Nothing herein shall limit the authority of the United States to undertake any action against any person, including Godel, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare or

the environment.

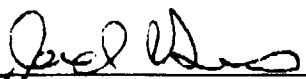
c. This Consent Decree does not limit or affect the rights of the United States or Godel against any third parties (parties not specifically part of this Consent Decree), nor does it limit the rights of such third parties against Godel except as provided by law.

30. No Warranty with Respect to Compliance. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Godel's compliance with this Consent Decree will constitute or result in complete compliance with the provisions of the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

THE PARTIES HEREBY CONSENT to the entry of this Consent Decree subject to the public notice requirement of 28 C.F.R. § 50.7:

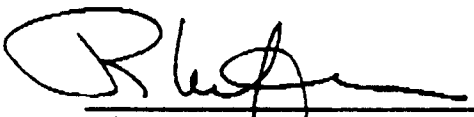
FOR PLAINTIFF, UNITED STATES OF AMERICA:

LOIS J. SCHIFFER
Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division



JOEL GROSS
Section Chief
Environmental Enforcement Section


Date: 3-22-99



ROBERT E. LEFEVRE
Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044

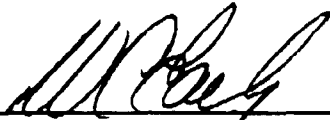
Date: 3/23/99

CARL SCHNEE
United States Attorney
District of Delaware



PATRICIA C. HANNIGAN
I.D. No. 2145
Assistant United States Attorney
Chase Manhattan Centre
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, DE 19899-2046

Date: 3/26/99



Date:

3/5/99

WILLIAM C. EARLY
Acting Regional Counsel
United States Environmental Protection Agency (3RC00)
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

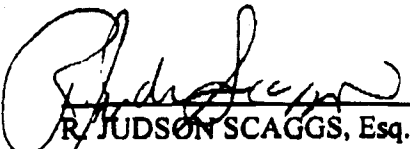


Date:


3/2/99

CHARLES McPHEDRAN
Senior Assistant Regional Counsel
United States Environmental Protection Agency (3RC11)
1650 Arch Street
Philadelphia, PA 19103-2029

FOR DEFENDANT, STANDARD CHLORINE OF DELAWARE:


R. JUDSON SCAGGS, Esq.
Morris, Nichols, Arsht & Tunnell
1201 Market Street
P.O. Box 1347
Wilmington, DE 19899-1347


Date: 2/26/99


MARGARET W. KELLY
Vice President/General Counsel
Godel, Inc.
1035 Belleville Turnpike
Kearny, NJ 07032

Date: 2/29/99

Agent Authorized to Accept Service on Behalf of Godel:

Name: R. Judson Scaggs, Jr., Esquire
Title: Attorney
Address: Morris, Nichols, Arsht & Tunnell
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347

AND NOWEN ^{28th}
day of Feb, 1999
It is so ordered.

UNITED STATES DISTRICT JUDGE

IT IS SO ORDERED this _____ day of _____, 1999.

UNITED STATES DISTRICT JUDGE