
**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

**IN THE MATTER OF:
AMERICAN CHEMICAL LLC
Attn: Andrew Gustafson, Registered Agent
8082 West 24000North
Portage, Utah 84331**

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER OF
CONSENT**

Docket No. I19-10

This Administrative Settlement Agreement and Order on Consent (“Agreement” or “Order”) is entered into voluntarily by and between the Director of the Utah Division of Water Quality (“Director”), under the Director’s legal authorities described below and American Chemical, LLC in its capacity as the “Operator” who is legally responsible for the operation of the American Chemical biodiesel waste recycling plant (“Facility”), jointly referred to hereafter as “the Parties.” By entering into this Agreement, the parties wish, without further administrative or judicial proceedings, to resolve the issues arising out of alleged violations of the Utah Water Quality Act, Utah Code Section 19-5-101 *et seq.* (the “Act”), and corresponding regulations in the Utah Administrative Code R305-7 *et seq.*

STATUTORY AND REGULATORY AUTHORITY

1. The Director has authority to administer the Act pursuant to Utah Code Section 19-1-105(1)(e), and to enforce the Utah Water Quality Rules, Utah Administrative Code R317 through the issuance of orders, as specified in Utah Code Sections 19-5-106(2)(d) and Section 19-5-111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).

FACTS AND FINDINGS

The Director issued a Notice of Violation and Order, Docket Number I19-10 (“NOV/CO”) to American Chemical, LLC on November 18, 2019. The Director relies upon the following Facts and Findings for purposes of this Agreement:

1. American Chemical LLC (**American Chemical**) is a domestic Limited-Liability Company registered and doing business in the State of Utah with a listed company address of 8082 West 24000 North in Portage, UT 84331. As of April 7, 2020, Andrew Gustafson is the registered agent for **American Chemical**, at the Facility address. When the NOV/CO was issued, Jeremiah Kingston was the registered agent with an address of 5144 Park Vista Court in West Valley City, Utah 84120.

2. On or about August 12, 2019, the Division received a report that **American Chemical** was regularly disposing of chemical wastes in ponds, sewers, storm drains, and on the ground. This report was forwarded to the Division by Region 8 of the EPA, entered into the Utah Department of Environmental Quality's (DEQ) Incident Reporting database and assigned the Incident Number 14077. According to the report, this illegal disposal had been occurring since March 2019 and was done intentionally by the company management.
3. On or about August 28, 2019, an employee of the Division, along with employees of the Utah Division of Waste Management and Radiation Control and representatives of the Bear River Health Department and Box Elder County Fire Department met with John Matthew Gustafson, John Kjelgaard, and Matthew Gustafson, representatives of **American Chemical**, at the Facility located at approximately 7950 West 24000 North, Portage, Utah (hereafter sometimes "the Facility"). After obtaining consent to enter, the DEQ employees and other representatives performed an inspection of the Facility and its affects at the adjoining properties. The results of that inspection were memorialized in in an Inspection Report dated October 21, 2019 and sent to American Chemical on October 22, 2019.
4. **American Chemical** sent a short two-page response to the inspection report on November 21, 2019, documenting several actions taken in response to poor housekeeping and best management practices listed in the inspection report. However, none of these actions stopped the illegal discharges documented in the inspection report.
5. The Division issued an NOV/CO for the issues outlined in the inspection report on November 18, 2019. Specifically, the NOV/CO ordered **American Chemical** to:
 - a. Initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act in Utah Code Title 19 Chapter 5 and the Water Quality rules in the Utah Administrative Code, R317. This includes applying for or obtaining all necessary discharge, storm water, and groundwater permits, or providing rationale with concurrence from the Director justifying why no permits are necessary.
 - b. Cease and desist all un-permitted discharges which violate Utah Water Quality standards.
 - c. Submit a report containing the information below. The report must be submitted to the Director within thirty (30) days of the date of issuance of this NOV/CO and must provide the information listed below:
 - i. An evaluation of what caused the cited violations. This information should include the facts of the specific discharge outlined in the Facts and Determinations, as well as any other information regarding the release that occurred that may be important in resolving the violations listed in Section D of this NOV/CO.

- ii. Describe, in detail, the actions taken and/or planned to be implemented (including dates), to attain and continue to be in full compliance with this NOV/CO.
 - iii. Describe, in detail, any environmental mitigation and restoration plans for the area affected by the discharge, and the expected timetables related to these plans.
 - d. Submit a Contamination Investigation Report to the Director within 60 days of receipt of this Order that adequately defines the nature and extent of ground water contamination in accordance with R317-6-6.15 of the ground water quality protection rules.
 - e. After Director Approval of the Contamination Investigation Report, submit a Corrective Action Plan for Director approval in accordance with R317-6-6.15 of the ground water quality protection rules within 90 days. Priority should be placed on locating and removing any free phase liquid hydrocarbon product, followed by remediation of any contaminated soil and ground water above DERR Initial Screening Levels, pursuant to compliance schedule approved by the Director.

American Chemical responded to the NOV/CO with the same response it sent previously to the inspection report, did not apply for the required permits, and did not submit a contamination investigation report.

6. The Division sent a letter to **American Chemical** on March 30, 2020, notifying it that because it failed to properly respond to or contest the NOV/CO, the NOV/CO was final.
7. **American Chemical** responded by email on March 31, 2020. In this message the company representative requested background information about the letter and erroneously believed that the letter previously sent in response to the inspection report would also be sufficient to respond to the Notice of Violation. On November 26, 2019, the Division sent an email to the company informing them that separate responses would be required for both the Inspection Report and the Notice of Violation.

ORDER

Based upon the foregoing Facts and Findings, the Agreement of **American Chemical**, and good cause appearing, IT IS HEREBY ORDERED as follows:

1. **American Chemical** shall pay a penalty in the amount of \$25,810.00 and investigative costs in the amount of \$1,709.34, for a total of \$27,519.34. The penalty was calculated and adjusted for circumstances in conformance with the penalty policy outlined in Utah Administrative Code R317-1-8.

Payment is to be made within thirty (30) days of the effective date of this Agreement by online payment, or check made payable to the State of Utah, referencing this matter, delivered or mailed to:

Utah Department of Environmental Quality
Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

2. American Chemical shall complete the following tasks:

- a. Submit complete applications for all relevant Groundwater, Storm water, and UPDES permits deemed necessary by the Director;
- b. Submit Contamination Investigation Report to the Director within 60 days of receipt of this Order that adequately defines the nature and extent of ground water contamination in accordance with R317-6-6.15 of the ground water quality protection rules.

3. If American Chemical complies with this Order, it shall be relieved of any further obligation or liability under this agreement.

GENERAL PROVISIONS

1. The Parties recognize that this Agreement has been negotiated in good faith and nothing herein constitutes an admission of any liability. **American Chemical** does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts and violations alleged in the NOV/CO. Operator further agrees it will not contest the basis or validity of this Order or its terms.
2. **American Chemical** agrees to the terms, conditions and requirements of this Order. By signing this Order, **American Chemical** understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the NOV/CO; and (3) the opportunity for judicial review.
3. Compliance will be conditioned upon **American Chemical's** adherence to the requirements of this Order, the Act, and the applicable Water Quality Rules.
4. This Order includes a civil penalty in excess of \$25,000 and therefore must be presented to, reviewed by, and approved or disapproved by the Board. (Utah Code § 19-5-104(3)(h)). Final approval by the Director of this Order shall not occur until it is approved by the Board. The Effective Date shall be the date this Order is signed by the Director after it is formally approved by the Board. The Order will not be presented to the Board for final action until after the Division has provided public notice of the proposed Order and has solicited and

reviewed any public comments received. All public comments, and the Director's responses, shall be provided to the Board in connection with the Director's request for final action.

5. The Date of Issuance shall be the date this Order is executed by the Director ("Effective Date"). The Director will not sign the Consent Order until after the Division has provided public notice of the proposed Order and has solicited and reviewed any public comments received.

The dates set forth in the Order section of this Order may be extended in writing by the Director, in the Director's sole discretion, based on the Operator's showing of good cause. Good cause for an extension generally means events outside of the reasonable control of the Operator, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects the Operator to employ reasonable means to limit foreseeable causes of delay. The timeliness of the Operator's request for an extension shall constitute an important factor in the Director's evaluation.


6. Nothing in this Order shall limit the power and authority of the Division, Director or the State of Utah to take, direct, or order all actions necessary, including the assessment of civil penalties, in connection with future violations, to protect public health, welfare, or the environment, or to prevent, abate, or minimize an actual, potential, or threatened release of pollutants or contaminants to waters of the State. Further, nothing in this Order shall prevent the Director or the Water Quality Board from seeking equitable relief to enforce the terms of this Agreement, from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations, or from requiring Respondent in the future to perform additional activities pursuant to the Act or any other applicable law in connection with future violations.
7. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Order.
8. The person signing this Order on behalf of the Operator represents to the Director that he or she has the full legal authorization to do so and agrees that the Director may rely on that representation.
9. This Order may be amended in writing if signed by both Parties.

COMPLIANCE AND PENALTY NOTICE

As of the date of Issuance, this Order shall constitute a final administrative order. Compliance with the provisions of the Consent Order is mandatory. All violations of the Utah Water Quality Act, the Water Quality Rules, and this Consent Order will be strictly enforced during the time that this Consent Order remains in effect. The Utah Water Quality Act, Utah Code Section 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district judge imposing a civil penalty per day of violation.

IT IS SO AGREED AND ORDERED:

FOR THE UTAH DIVISION OF WATER QUALITY

By: 

Erica B. Gaddis, PhD
Director

Date: 09/14/2021 (Effective Date)

FOR (OPERATOR)

By: Adam Gustafson
Title: CEO
Date: 5/28/2021



AMERICAN CHEMICAL, LLC

DWQ-2020-009623