



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0470  
Fax: (304) 926-0488

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
HAZARDOUS WASTE MANAGEMENT ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: NewChem Inc./Deltech Resin  
Dennis Cooper, Operations Manager  
7743 Ohio River Blvd.  
New Cumberland, WV 26047

DATE: September 8, 2015  
ORDER NO.: HW-16-001

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 18, Section 1 et seq. to NewChem Inc./Deltech Resin (hereinafter "NewChem").

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. NewChem operates a specialty chemical manufacturing facility that is a large quantity generator of hazardous waste located in New Cumberland, Hancock County, West Virginia and has been assigned EPA ID No. WVD981945215.
2. On May 18, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Code of Federal Regulations were observed and documented:
  - a. 40CFRPart 262.34(a)(3)-NewChem failed to mark drums with the words "Hazardous Waste."
  - b. 40CFRPart 262.34(a)(2)-NewChem failed to mark drums with the date of accumulation.
  - c. 40CFRPart 265.174-NewChem failed to conduct weekly container storage area inspections.

- d. 40CFRPart 265.171-NewChem failed to store hazardous waste in containers in good condition.
- e. 40CFRPart 265.16(a)(1)-NewChem failed to conduct hazardous waste training for some of the applicable personnel on site.

As a result of the aforementioned violations, a Notice of Violation (NOV) dated June 30, 2015 was issued to NewChem.

3. On September 3, 2015, WVDEP personnel and a representative of NewChem met to discuss the terms and conditions of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. NewChem shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, NewChem shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when NewChem will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD981945215 and Order No. HW-16-001. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
Environmental Enforcement - Hazardous Waste  
131 A Peninsula St.  
Wheeling, WV 26003**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of NewChem's Code of Federal Regulations violations, NewChem shall be assessed a civil administrative penalty of twelve thousand three hundred thirty-three dollars (\$12,333) to be paid to the West Virginia Department of Environmental

Protection for deposit in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. NewChem hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code of West Virginia. Under this Order, NewChem agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, NewChem does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding NewChem other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, NewChem shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after NewChem becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and NewChem shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which NewChem intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of NewChem (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving NewChem of the obligation to comply with any applicable law, permit, other

order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject NewChem to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on NewChem, its successors and assigns.
7. This Order shall terminate upon NewChem's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Dennis Cooper, Operations Manager  
NewChem Inc./Deltech Resin

9/14/15  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

*revised June 2015*

**RECEIVED**

SEP 17 2015

**ENVIRONMENTAL  
ENFORCEMENT**

### PHOTO LOG

**Facility:** NewChem, Inc. / Deltech Resin

**Location:** State Route 2, Hancock County, WV

<b>Photo#</b>	<b>Date</b>	<b>Time</b>	<b>Lighting</b>	<b>Description</b>
1	05-18-15	N/D	Indoor	Reworking drums of hazardous waste within one of the newly constructed warehouse buildings.
2	05-18-15	N/D	Indoor	Close up of drums of hazardous waste – many without a hazardous waste label or date of accumulation.
3	05-18-15	N/D	Indoor	Close up of a bulging drum of hazardous waste in poor condition.
4	05-18-15	N/D	Outside	Drums of unmarked hazardous waste temporarily being stored in the rear lot.

**Photographer:** Mark Smith, Environmental Inspector

**Log Prepared By:** Jamie Fenske, Environmental Inspector Supervisor









## Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

**Responsible Party:** NewChem Inc./Deltech Resin    **EPA ID Number:** WVD981945215

**Generator Classification:**    LQG

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#													
			2a	2b	2c	2d	2e									
a)	Harm to RCRA Program	1 to 3	1	1	2	2	3									
b)	Probability of Exposure	0 to 3	1	1	2	2	2									
c)	Potential Seriousness of Contamination	1 to 3	1	1	1	2	1									
<b>Average Potential for Harm Factor</b>			1	1	1.7	2	2	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	1	1	1	3	2									

**Potential for Harm Factors**

- 1a. - Harm to the RCRA Program
  - All regulatory requirements are fundamental to the continued integrity of the RCRA Program
  - Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit
  
- 1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release
  
- 1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

**Note:** Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.





**Penalty Adjustment Factors**  
(pursuant to 33CSR27-6.2)

**Penalty Adjustment Factors**

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -  
based upon review of last three (3) years - Warning = maximum of 5% each,  
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

## Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease		10	(\$1,367)
6.2.b.2 - Willfulness and/or negligence	10		\$1,367
6.2.b.3 - Cooperation with the Secretary		10	(\$1,367)
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
<b>Penalty Adjustments</b>			<b>(\$1,337)</b>
<b>Penalty =</b>			<b>\$12,333</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> Economic benefit not warranted.	