

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: :
:
:
KmX Chemical Corporation :
998C Old Country Road :
Plainview, New York 11803 :
:
:
Respondent, :
:
KmX Chemical Corporation :
30474 Energy Drive :
New Church, Virginia 23415 :
:
:
Facility. :
:

CONSENT AGREEMENT
AND FINAL ORDER

EPA Docket No. RCRA-03-20144

Proceeding under Section 3008
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a)

2012 MAY 24 PM 3:00
 REGIONAL HEARING OFFICE
 EPA REGION III
 PHILADELPHIA, PA

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I. PRELIMINARY STATEMENT

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“Complainant” or “EPA”), and KmX Chemical Corporation (“KmX” or “Respondent”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order (“FO”, hereinafter jointly referred to as the “CA/FO”) both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent’s facility at 30474 Energy Drive, in New Church, Virginia, 23415 (the “Facility”).
2. The Commonwealth of Virginia has received federal authorization to administer a Hazardous Waste Management Program (the “Virginia Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The Virginia Hazardous Waste Management Regulations (“VaHWMR”), as codified at 9 VAC 20-260-10 *et seq.* (1984), were authorized, effective December 18, 1984 (49 Fed. Reg. 47391 (December 4, 1984)), by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part

271, Subpart A, and subsequently were re-authorized effective: August 13, 1993 (58 Fed. Reg. 32,885 (June 14, 1993)); September 29, 2000 (65 Fed. Reg. 46,607 (July 31, 2000)); June 20, 2003 (68 Fed. Reg. 36,925 (June 20, 2003)); July 10, 2006 (71 Fed. Reg. 27,216 (May 10, 2006)); and July 30, 2008 (73 Fed. Reg. 44,168 (July 30, 2008)). The provisions of the authorized VaHWMR, through such authorization, have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

3. The factual allegations and legal conclusions in this CA are based on provisions of the VaHWMR in effect at the time of the violations alleged herein. The current VaHWMR incorporate and adopt, with certain exceptions, definitions and specific provisions of Title 40 of the 2006 Code of Federal Regulations by reference. See 9 VAC 20-60-14, -18 and -260 through - 279.
4. On April 5, 2010, EPA sent a letter to the Commonwealth of Virginia, through the Virginia Department of Environmental Quality, giving Virginia prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. This CA is entered into by Complainant and Respondent to address the violations alleged in the Allegations of Fact and Conclusions of Law, as set forth below.
6. For the purposes of this proceeding only, Respondent admits the jurisdictional allegations of this CA.
7. For the purposes of this proceeding only, Respondent neither admits nor denies the Allegations of Fact contained in this CA, except as provided in Paragraph 6, above.
8. For the purposes of this proceeding only, Respondent neither admits nor denies the Conclusions of Law contained in this CA, except as provided in Paragraph 6, above.
9. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations herein or to appeal the FO attached hereto.
10. The settlement agreed to by the parties in this CA reflects the desire of the parties to resolve this matter without litigation.
11. Respondent consents to the issuance of this CA and to the attached FO and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
12. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Allegations of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 7 and 8, above, Respondent neither admits nor denies these Allegations of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 10, above.
14. Respondent is, and was at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 9 VAC 20-60-260(A).
15. Respondent is, and was at the time of the violations alleged herein, the “owner” and “operator” of a “facility” located at 30474 Energy Drive, New Church, Virginia (the “Facility”), as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260(A).
16. On December 8, 2008, representatives from EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Facility.
17. At the time of the CEI, and at all times relevant to the violations alleged in this CA, Respondent was a “generator,” and was engaged in the “storage” of materials described herein that are “solid wastes” and “hazardous wastes” in “containers” and “tanks” at the Facility, as those terms are defined in 9 VAC 20-60-260(A), which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

COUNT I

(Failure to Qualify for with Permit Exemption of 40 C.F.R. § 262)

18. The preceding paragraphs are incorporated by reference.
19. Pursuant to 9 VAC 20-60-270(A), which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility, or is otherwise exempt from the requirement to obtain such a permit..
20. Respondent has never been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 9 VAC 20-60-270(A), which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 9 VAC 20-60-270(A), which incorporates by reference 40 C.F.R. § 270.70, at any time.

21. A generator of hazardous waste who accumulates hazardous waste in tanks on-site for less than 90 days is exempt from the requirement to obtain a permit for such accumulation, pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference 9 VAC 20-60-262(A), so long as the hazardous waste is stored in such tanks in accordance with a number of provisions set forth in that section, including, *inter alia*:
- a. 40 C.F.R. § 262.34(a)(4), (as incorporated by reference by 9 VAC 20-60-262(A)), which references 40 C.F.R. § 265.16(c), which provides that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations. Moreover, personnel must take part in an annual review of the required initial training;
 - b. 40 C.F.R. § 262.34(a)(4), (as incorporated by reference 9 by VAC 20-60-262(A)), which references 40 C.F.R. § 265.16(d), which requires that the owner or operator of the facility keep records at the facility documenting the job title for each position at the facility relating to hazardous waste management and the name of the employee filling each job; a written job description for each position listed, including the duties of facility personnel assigned to each position; and the training required and completed by the personnel filling the positions;
 - c. 40 C.F.R. § 262.34(a)(4), (as incorporated by reference by 9 VAC 20-60-262(A)), which references 40 C.F.R. § 265.52, which requires that the owner or operator of the facility maintain an updated contingency plan, including the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, list the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date, and must include a list of all emergency equipment at the Facility, and decontamination equipment;
 - d. 40 C.F.R. § 262.34(a)(1)(ii), (as incorporated by reference by 9 VAC 20-60-262(A)), which references 40 C.F.R. § 265.192(a) and (g), which provide that the owner or operator of a new tank system must obtain and submit to the Director, a written assessment reviewed and certified by a qualified Professional Engineer attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste, and must keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise its installation in accordance with 40 C.F.R. §§ 264.192(b) through (f), that attest that the tank system was properly designed and installed and that repairs, pursuant to 40 C.F.R. §§ 264.192(b) through (f) were performed; and

- e. 40 C.F.R. § 262.34(a)(1)(ii), (as incorporated by reference 9 VAC 20-60-262(A)), which references 40 C.F.R. § 265.195, which provides that if placing hazardous waste into tanks, the owner or operator of the tanks holding hazardous waste must also document the inspection of, at least once each operating day, data gathered from monitoring and leak detection equipment to ensure that the tank system is being operated according to its design, as well as the inspection of overflow/spill control equipment, above-ground portions of the tank system to detect corrosion or releases of waste, and the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system.
22. Beginning January 1, 2008, and continuing through at least June 30, 2010, Respondent was not in compliance with all of the conditions for the temporary accumulation of hazardous waste by a generator pursuant to 9 VAC 20-60-262(A) which incorporates by reference 40 C.F.R. § 262.34(a), described in Paragraph 21, above, and therefore did not qualify for the exemption from the permitting/interim status requirements provided by such sections. Specifically, Respondent failed to qualify for the exemption in 40 C.F.R. § 262.34(a) in the following ways:
- a. By storing hazardous waste in Tank Nos. 58 and 71 for greater than 90 days, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a), as incorporated by reference in 9 VAC 20-60-262(A);
 - b. By failing to fully develop and implement a hazardous waste training program, as discussed further in Count III, Respondent failed to satisfy the exemption condition set forth in 40 C.F. R. § 262.34(a)(4), which references 40 C.F.R. § 265.16(c), as incorporated by reference in 9 VAC 20-60-262(A);
 - c. By failing to provide job titles and job descriptions for positions at the facility relating to hazardous waste management, as discussed further in Count IV, Respondent failed to satisfy the exemption condition set forth in 40 C.F. R. 40 C.F.R. § 262.34(a)(4), which references § 265.16(d), as incorporated by reference by 9 VAC 20-60-262(A);
 - d. By failing to maintain an updated contingency plan, as discussed further in Count V, including failing to provide the home addresses and work phone numbers for emergency coordinators, failing to describe arrangements with local responders, and failing to provide the locations and capacities of emergency equipment at the Facility, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(4), which references 40 C.F.R. § 265.52, as incorporated by reference 9 VAC 20-60-262(A);
 - e. By failing to obtain and submit to the Director, for a new tank system, a written assessment reviewed and certified by a qualified Professional Engineer attesting

that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste, as discussed further in Count VI, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.192(a) and (g), as incorporated by reference by 9 VAC 20-60-262(A); and

- f. By failing to inspect, each operating day, data gathered from monitoring and leak detection equipment for tank systems, as discussed further in Count VII, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.195, as incorporated by reference by 9 VAC 20-60-262(A).
23. The Facility was, at all times relevant to the violations alleged in this CA, a hazardous waste treatment, storage or disposal "facility," as the term is defined by 9 VAC-20-60-260(A), with respect to the activities and units described herein.
24. From at least January 1, 2008 until June 30, 2010, Respondent failed to qualify for the "less than 90 day" generator accumulation exemption of 9 VAC 20-60-262(A), which incorporates by reference 40 C.F.R. § 262.34(a) with exceptions not relevant herein, by failing to satisfy the conditions for the exemption as set forth in 9 VAC 20-60-262(A).
25. Respondent stored hazardous waste at the Facility without a permit, interim status or valid exemption, in violation of 9 VAC 20-60-270(A), which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

COUNT II
(Failure to Make Hazardous Waste Determinations)

26. The preceding paragraphs are incorporated by reference.
27. 9 VAC 20-60-262A), which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste as defined in 9 VAC 20-60-260.A, and 9 VAC 20-60-261, which incorporate by reference 40 C.F.R. § 260.10, and § 261.2 shall determine if that waste is a hazardous waste, using the methods set forth in 9 VAC 20-60-262(A), which incorporates by reference 40 C.F.R. § 262.11, with exceptions not relevant herein.
28. During the December 8, 2008 EPA CEI, KmX was unable to provide waste determinations for the hazardous waste in Tank Nos. 58, 71 and 72. KmX also failed to make hazardous waste determinations for fluorescent bulbs.
29. The waste in Tank Nos. 58, 71, and 72, as well as the fluorescent bulbs, were "solid wastes," within the meaning of 9 VAC 20-60-260(A), and 9 VAC 20-60-261 which incorporated by reference 40 C.F.R. § 260.10 and 40 C.F.R. § 261.2, but Respondent failed to determine whether such solid wastes were hazardous wastes.

30. Respondent failed to make a hazardous waste determination for the solid waste contents of Tank Nos. 58, 71, and 72 and the fluorescent bulbs at the Facility, in violation of 9 VAC 20-60-262 and 40 C.F.R. § 262.11.

COUNT III

(Failure to Develop and Implement a Hazardous Waste Training Program)

31. The preceding paragraphs are incorporated by reference.
32. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.16(a)-(c), requires that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's RCRA compliance. 9 VAC 20-60-264(A) which incorporates by reference 40 C.F.R. § 264.16(b), requires that facility personnel must successfully complete such program within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.16(c), requires that facility personnel must take part in an annual review of the initial training required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.16(a).
33. Respondent failed to provide initial and annual review training in calendar years 2007 and 2008 to the Facility's plant manager and to several emergency coordinators in 2008.
34. The Facility's failure to provide facility personnel whose positions required knowledge of hazardous waste management at the Facility with initial and annual review hazardous waste management training described in paragraph 32 above, in 2007 and 2008 was a violation of 9 VAC 20-60-264(A) and 40 C.F.R. § 264.16(a)-(c).

COUNT IV

(Failure to Develop and Maintain Records of Job Descriptions)

35. The preceding paragraphs are incorporated by reference.
36. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.16(d), requires that the owner or operator of a facility must maintain documents and records at the facility which include, but are not limited to, job titles for each position at the facility related to hazardous waste management and the name of the employee filling each job, and written job descriptions for each such position.
37. From at least January 1, 2008 until June 30, 2010, Respondent failed to maintain documentation of the job titles and job descriptions for positions at the Facility relating to hazardous waste management.

38. Respondent's failure to maintain adequate documentation of the job titles and job descriptions for positions related to hazardous waste management at the Facility was a violation of 9 VAC 20-60-264(A) and 40 C.F.R. § 264.16(d).

COUNT V
(Failure to Maintain an Adequate Contingency Plan)

39. The preceding paragraphs are incorporated by reference.
40. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.52(c)-(e), requires that each owner or operator of a hazardous waste facility must maintain a contingency plan for the facility. The contingency plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, list the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinators and this list must be kept up to date, and must include a list of all emergency equipment at the facility, and decontamination equipment.
41. From at least January 1, 2008 until June 30, 2010, Respondent failed to provide the home addresses and work phone numbers for the Facility's emergency coordinators, failed to describe arrangements with local responders, and failed to provide the locations and capacities of emergency equipment at the Facility in the Facility Contingency Plan as required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.52(c)-(e).
42. Respondent's failure to maintain an updated and adequate contingency plan at the Facility was a violation of 9 VAC 20-60-264(A) and 40 C.F.R. § 264.52(c)-(e).

COUNT VI
(Failure to Comply with New Tank Assessment Requirements)

43. The preceding paragraphs are incorporated by reference.
44. Pursuant to 9 VAC 20-60-264(A) which incorporates by reference 40 C.F.R. § 264.192(g), owners and operators of new tank systems and components must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.193(b) through (f) that attest that the tank system was properly designed and installed and that repairs, pursuant to 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.193(b) and (d), were performed. These written statements must also include the certification statement as required in 9 VAC 20-60-270, which incorporates 40 C.F.R. § 270.11(d) by reference.

45. Tank Nos. 58 and 72 at the Facility are new tank systems within the meaning of 9 VAC 20-60-260(A), which incorporates 40 C.F.R. § 260.10 by reference.
46. From at least January 1, 2008 until June 30, 2010, Respondent failed to obtain and/or keep on file at the Facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 9 VAC 20-60-264(A), which incorporates 40 C.F.R. § 264.192(b) - (f) by reference, for Tank Nos. 58 and 72.
47. The Facility's failure to obtain and keep on file at the Facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.193(b) through (f) that attest that the tank system was properly designed and installed and that repairs, pursuant to 9 VAC 20-60-264(A) , which incorporates by reference 40 C.F.R. § 264.193(b) and (d), were performed, and further have such written statements recite the certification statement as required in 9 VAC 20-60-270, which incorporates 40 C.F.R. § 270.11(d) by reference for Tank Nos. 58 and 72 at the Facility was in violation of by 9 VAC 20-60-264(A) which incorporates by reference 40 C.F.R. § 264.192(a) and (g).

COUNT VII
(Failure to Provide Spill and Overflow Protection)

48. The preceding paragraphs are incorporated by reference.
49. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. §§ 264.194(b)(1) and (2), requires an owner or operator of tanks storing hazardous waste to provide spill prevention and overflow prevention controls to prevent spills and overflows from tank or containment systems.
50. On December 8, 2008, the day of the EPA CEI, Respondent did not provide spill or overflow prevention controls for Tank No. 58, which contains D001 hazardous waste that exhibited the characteristic for ignitability, within the meaning of 9 VAC 20-60-261(A), which incorporates by reference 40 C.F.R. § 261.21.
51. Respondent's failure to provide spill and overflow protection for Tank No. 58 at the Facility was in violation of 9 VAC 20-60-264(A) and 40 C.F.R. §§ 264.194(b)(1) and (2).

COUNT VIII
(Failure to Document Daily Tank Inspections in the Operating Record)

52. The preceding paragraphs are incorporated by reference.
53. 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. §§ 264.195(c)(2), requires that the owner or operator of tank systems that store or treat hazardous waste must inspect, at least once each operating day, the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system to detect erosion or signs of releases of hazardous waste. The owner or operator of the tank is also required to document these daily inspections as required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. §§ 264.195(h).
54. From at least January 1, 2008, Respondent failed to inspect the secondary containment system of Tank No. 58 which contains D001 hazardous waste, as required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. §§ 264.195(c)(2), and failed to document inspections as required by 40 C.F.R. §§ 264.195(h).
55. Respondent's failure to inspect and document the inspection of Tank No. 58 at the Facility was in violation of 9 VAC 20-60-264(A) and 40 C.F.R. §§ 264.195(c)(2) and 264.195(h).

COUNT IX
(Failure to Mark Equipment Subject to Subpart BB)

56. The preceding paragraphs are incorporated by reference.
57. Pursuant to 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1050(d), Respondent is required to mark equipment that contains or contacts hazardous wastes with organic concentrations of at least ten percent by weight in such a manner that that it can be distinguished readily from other pieces of equipment.
58. During the December 8, 2008 EPA CEI, equipment that contains or contacts hazardous wastes with organic concentrations of at least ten percent by weight associated with Tanks 58, 71 and 72 were not marked in such a manner that such equipment could be distinguished readily from other pieces of equipment.
59. Respondent's failure to mark equipment that contains or contacts hazardous wastes with organic concentrations of at least ten percent by weight associated with Tanks 58, 71 and 72 was in violation of 9 VAC 20-60-264(A) and 40 C.F.R. § 264.1050(d).

COUNT X

(Failure to Monitor and Keep Records for Equipment Subject to Subpart BB)

60. The preceding paragraphs are incorporated by reference.
61. Pursuant to 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1064(b)(1)(i) – (vi), owners and operators of equipment to which 40 C.F.R. Part 264, Subpart BB, Air Emission Standards for Equipment Leaks, applies must record certain information in the facility operating record for each piece of equipment, including the:
(i) Equipment identification number and hazardous waste management unit identification; (ii) Approximate locations of the equipment within the facility; (iii) Type of equipment; (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment; (v) Hazardous waste state at the equipment; *e.g.* gas/vapor or liquid) and, (vi) Method of compliance with the standard.
62. During the December 8, 2008 EPA CEI, Respondent had not recorded in the Facility operating record the information required by to 9 VAC 20-60-264(A) , which incorporates 40 C.F.R. § 264.1064(b)(1)(i) – (vi), by reference, for Tanks 58, 71 and 72.
63. Respondent's failure to record in the Facility's operating record the information required by 40 C.F.R. § 264.1064(b) for Tanks 58, 71 and 72 was in violation of 9 VAC 20-60-264.A and 40 C.F.R. § 264.1064(b)(1)(i) – (vi).

COUNT XI

(Failure to Maintain Documentation and Information for Subpart CC Tanks)

64. The preceding paragraphs are incorporated by reference.
65. Pursuant to 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1088 (a), the owner or operator of a facility subject to requirements of 40 C.F.R. Part 264 Subpart CC, Air Emissions Standards for Tanks, Surface Impoundments and Containers, shall inspect and monitor air emission control equipment used to comply with 40 C.F.R. Part 264 Subpart CC in accordance with the applicable requirements specified in 40 C.F.R. § 264.1084 through 40 C.F.R. § 264.1087.
66. Pursuant to 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1088 (b), the owner or operator of a facility subject to requirements of 40 C.F.R. Subpart CC shall develop and implement a written plan and schedule to perform the inspections and monitoring required by 40 C.F.R. § 264.1088(a). The inspection plan developed under 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1088, must be incorporated into the general facility inspection required pursuant by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.15, including the requirement that such inspections be recorded in an inspection log or summary as described in 40 C.F.R. § 264.15(d), and that this log or summary be retained for period of at least three

years as required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1089(a).

67. During the December 8, 2008 EPA CEI, Respondent had not maintained any of the documentation and information required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1089(a) and 40 C.F.R. § 264.15(d) for Tanks 58, 71 and 72 in either a log or summary and for a period of three years.
68. Respondent's failure to maintain the documentation and information required by 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1089(a) and 40 C.F.R. § 264.15(d) for Tanks 58, 71 and 72 in either a log or summary for a period of three years for Tanks 58, 71 and 72 was in violation of 9 VAC 20-60-264(A), which incorporates by reference 40 C.F.R. § 264.1089(a) and 40 C.F.R. § 264.15(d).

III. CIVIL PENALTY

69. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CAFO, Respondent consents to the assessment of a civil penalty in the amount of **\$50,000.00** which Respondent agrees to pay in accordance with the terms set forth below.
70. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent, as follows:

- a. KmX and Subsidiaries, Consolidated Financial Statements, for the years 2004 – 2009;
- b. KmX Chemical Corporation, U.S. Corporate Income Tax Returns, for the years 2005 – 2009;

- c. Financial Statement for Corporations, Business or Other Organizations, Ability to Pay Claim Form for KmX Corporation and KmX Chemical Corporation;
- d. KmX Chemical Corporation Audit Book, dated July 19, 2010; and
- e. KmX Chemical A/R Aging Summary, as of November 8, 2010.

71. In reliance upon the financial information identified in Paragraph 70, immediately above, and based upon an analysis of the same and in consideration of the penalty criteria set forth in EPA's RCRA Penalty Policy, which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), Complainant has concluded that Respondent has established that it is unable to pay a civil penalty in excess of the amount of **\$50,000.00** in settlement of the above-captioned action.
72. The civil penalty of **\$50,000.00** in Paragraph 69, above, may be paid in four (4) installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of \$6,305.58 shall be paid 30 days after the Effective Date of the Final Order;
 - b. 2nd Payment: The second payment in the amount of \$6,305.58 plus interest, consisting of a principal payment of \$6,195.13 and an interest payment of \$110.45, shall be paid 120 days after the Effective Date of the Final Order;
 - c. 3rd Payment: The third payment in the amount of \$6,305.58 payment plus interest, consisting of a principal payment of \$6,209.75 and an interest payment of \$95.83, shall be 210 days after the Effective Date of the Final Order;
 - d. 4th Payment: The fourth payment in the amount of \$6,305.58 plus interest, consisting of a principal payment of \$6,225.62 and an interest payment of \$79.96 shall be paid 300 days after the Effective Date of the Final Order;
 - e. 5th Payment: The fifth payment in the amount of \$6,305.58 payment plus interest, consisting of a principal payment of \$6,242.92 and an interest payment of \$62.66, shall be 360 days after the Effective Date of the Final Order.

f. 6th Payment: The sixth payment in the amount of \$ 6,305.58 plus interest, consisting of a principal payment of \$6258.00 and an interest payment of \$47.58, shall be paid 480 days after the Effective Date of the Final Order;

g. 7th Payment: The seventh payment in the amount of \$6,305.58 payment plus interest, consisting of a principal payment of \$6,273.47 and an interest payment of \$32.11, shall be 570 days after the Effective Date of the Final Order

h. 8th Payment: The eighth and final payment in the amount of \$6,305.58 payment plus interest, consisting of a principal payment of \$6,289.53 and an interest payment of \$16.05, shall be 660 days after the Effective Date of the Final Order.

73. Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of \$50,000.00 and total interest payments in the amount of \$444.64.
74. By the signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.
75. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.
76. Pursuant to 26 U.S.C. § 162(f), the civil penalty agreed to herein is not tax-deductible.
77. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of

the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3).

78. Payment of the civil penalty amount set forth in paragraph 69, above, shall be made by cashier's check, certified check, electronic wire transfer, or online via credit or debit card in the following manner:

- (a) All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2012-0144;
- (b) All checks shall be made payable to **United States Treasury**;
- (c) All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell 513-487-2063

- (d) All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- (e) All payments made by check in any currency drawn with no U.S.A. branches shall be addressed to:

Cincinnati Finance
USEPA, MS – NWD
26 West Martin Luther King Drive
Cincinnati, Ohio 45268 - 0001

- (f) All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 680107027 Environmental Protection Agency

- (g) All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid 202-874-7026 or REX 1-866-234-5681

- (h) All on-line payments with a debit or credit card:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

79. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

80. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Joyce Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

81. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
82. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a true and correct copy of this signed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
83. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
84. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. COMPLIANCE TASKS

85. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent will perform the following compliance task accordance with the time periods specified below, upon the effective date of the Final Order accompanying this Consent Agreement, except as otherwise expressly provided:

86. Respondent shall contract for the performance of a third-party Compliance Audit of the Facility, based upon the Virginia Hazardous Waste Management Regulations, as codified at 9 VAC 20-260-10 *et seq.* (1984). The Compliance Audit shall be completed within sixty (60) days of the effective date of this CAFO, and shall address the following:
- A. Waste determinations, including the basis of determination, for solid and hazardous wastes, including: 1) Incoming material for recycling; 2) Process residuals, co-products, and by-products; 3) In-process or intermediaries materials awaiting further processing, including possible comparable fuels; 4) All materials currently being burned, on site and off site, for energy recovery; and 5). Filter bags and other process wastes.
 - B. Length of time of temporary storage from the arrival of the material at the site until it is placed in the distillation columns. Identify tanks used for preprocessing storage by ID number.
 - C. Hazardous waste generator requirements, including: 1) Storage limitations, labeling and dating of tanks and containers; 2) Training and record keeping; and 3) Contingency plan.
 - D. Hazardous waste tank storage requirements, including: 1) Identify all tanks by ID number used to store hazardous waste; 2) Tank assessments; 3) Spill and overflow protection; 4) Tank inspections ; 5) Maintenance and operating requirements; 6) Waste determinations as required by 40 C.F.R. Part 264 Subparts BB and CC; 7) Monitoring and inspections as required by 40 C.F.R. Part 264 Subparts BB and CC; and 8) Recordkeeping as required by 40 C.F.R. Part 264 Subparts BB and CC.
87. Within 240 days of completion of the Compliance Audit, all areas of noncompliance identified by the third party audit shall be corrected.
88. Within 270 days after the effective date of this Consent Agreement and Final Order, Respondent shall submit to EPA a certification in the form set forth in Paragraph 90, below, by a responsible corporate officer, certifying the requirements of Paragraph 85 - 87 of this CAFO have been completed by Respondent.
89. Information or documents required to be submitted to EPA under this Compliance Order shall be sent to:

Kenneth Cox (3LC70)
Office of Land Enforcement
Land and Chemicals Division
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

Joyce A. Howell (3RC30)
Sr. Assistant Regional Counsel
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

90. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of the Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The certification of the responsible corporate officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

V. OTHER APPLICABLE LAWS

91. Nothing in this CA/FO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

VI. RESERVATION OF RIGHTS

92. This CA/FO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in § 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO.

VII. FULL AND FINAL SATISFACTION

93. This settlement shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations set forth in the CA/FO.

VIII. PARTIES BOUND

94. This CA/FO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CA/FO.

IX. EFFECTIVE DATE

95. The effective date of this CA/FO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

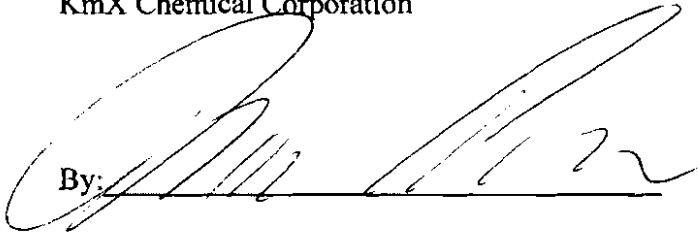
X. ENTIRE AGREEMENT

96. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.

For the Respondent:

KmX Chemical Corporation

Date: _____

By: 

Issac Gasco
Chief Executive Officer

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date:

May 17, 2012

By:

Joyce A. Howell
Joyce A. Howell
Sr. Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date:

5/17/12

By:

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, PA 19103-2029**

In the Matter of:

KmX Chemical Corporation
 998C Old Country Road
 Plainview, New York 11803

Respondent,

KmX Chemical Corporation
 30474 Energy Drive
 New Church, Virginia 23415

Facility.

CONSENT AGREEMENT
 AND FINAL ORDER

EPA Docket No. RCRA-03-2011-0118

Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)

2012 MAY 24 PM 3:00
 REGIONAL HEARING CENTER
 EPA REGION III, PHILADELPHIA

RECEIVED

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, KmX Chemical Corporation, have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of **\$50,000**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement, including but not limited to the performance of the Compliance Tasks.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 5/24/12

By: Renée Sarajian
Renée Sarajian
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

KmX Chemical Corporation
998C Old Country Road
Plainview, New York 11803

Respondent,

KmX Chemical Corporation
30474 Energy Drive
New Church, Virginia 23415

Facility.

CONSENT AGREEMENT
AND FINAL ORDER

EPA Docket No. RCRA-03-2014-014

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a)

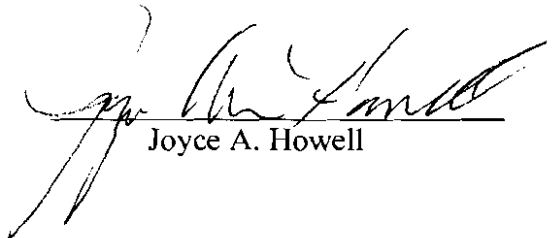
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2012 MAY 24 PM 3:00
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

CERTIFICATE OF SERVICE

I certify that on the date noted below, I send by Federal Express, a copy of the CONSENT AGREEMENT AND FINAL ORDER to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Sean M. Sullivan
Williams Mullen
A Professional Corporation
301 Fayetteville Street, Suite 1700
Raleigh, NC 27601

Dated: May 23, 2012


Joyce A. Howell