

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

IN THE MATTER OF:

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ARKANSAS MIDLAND RAILROAD
COMPANY

Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2023-0946

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6, and Arkansas Midland Railroad Company (“Respondent” or “AKMD”) and concerns thirty-four (34) rail cars¹ leased by ORG Chem Group, Inc., (“ORG Chem”) that were located on approximately 2,000 feet of a segmented rail track, leased to ORG Chem by Respondent (the “Leased Track”), located near 2200 Spring Street, Hot Springs, Arkansas (the “Site”).

2. Notice of the commencement of this action has been given to the State of Arkansas under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).²

¹ As of October 25, 2024, all 34 rail cars that are the relevant subject matter of this CAFO have been removed by the generator (W.R. GRACE & CO-CONN) and ORG Chem Group, from the location identified in Paragraph 1 of this CAFO.

² On January 25, 1985, the State of Arkansas received final authorization for its base Hazardous Waste Management Program (50 FR 1513). Subsequent revisions have been made to the Arkansas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management

3. In connection with EPA's delegation of RCRA authority to the State of Arkansas, the Arkansas Pollution Control and Ecology Commission has promulgated Rule 23 ("APC&EC Rule 23"). In addition to applicable federal regulations, APC&EC Rule 23 has been cited independently herein for the violation alleged in this CAFO.

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and the alleged violations of law contained in this CAFO.

5. The Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO and, for purposes of this proceeding only, waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

6. This CAFO resolves only the claim alleged herein, which relates to approximately 750,000 gallons of neutralized Crude OCT/COCT (the "Backlog Material") that were stored by ORG Chem in the 34 rail cars at the location identified in Paragraph one (1) of this CAFO.

7. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 Code of Federal Regulations ("C.F.R.") Part 22, EPA, Region 6 issues, and AKMD agrees to the issuance of this CAFO.

8. The Respondent consents to the issuance of this CAFO hereinafter recited, consents to assessment and payment of the stated civil penalty in the amount and by the method set out in

Program" dated October 2016, incorporated by reference under 40 C.F.R. § 272.201(c)(1)(i) effective on November 13, 2017. 82 Fed. Reg. 43189 (September 13, 2017); 40 C.F.R. 272.201: Arkansas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Arkansas' published version. The corresponding C.F.R. citations are also provided.

this CAFO, and consents to the specific time periods and requirements stated in Section V (Compliance Order).

9. By their signatures to this CAFO, the EPA and AKMD (the “Parties”) agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this CAFO, pursuant to 40 C.F.R. § 22.6, by email to the following addresses: EPA-Moncrieffe.marcia@epa.gov, and for Respondent as follows: Arkansas Midland Railroad-bellc@gtlaw.com.

II. JURISDICTION

10. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

11. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6, to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

12. Section IV of this CAFO contains concise statements of the factual and legal basis for EPA’s alleged violations of RCRA together with specific provisions of RCRA and the implementing regulations that Respondent is alleged by EPA to have violated.

III. STATUTORY AND REGULATORY BACKGROUND

13. Federal regulation of hazardous waste is primarily based on RCRA, enacted on

October 21, 1976, to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments (“HSWA”) enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 *et seq.*

14. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.

15. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to and consistent with the federal program.

16. Pursuant to its authority under Subtitle C of RCRA, 42 U.S.C. § 6922(a), EPA has promulgated regulations applicable to solid and hazardous waste generators at 40 C.F.R. Parts 261 and 262; to owner/operators of hazardous waste facilities at 40 C.F.R. Parts 264 and 265; and to land disposal of solid and hazardous waste at 40 C.F.R. Part 268. The Arkansas Department of Energy and Environment’s Division of Environmental Quality (“AR DEQ”), like EPA, has promulgated regulations applicable to these persons and practices, which are found at Arkansas Pollution Control and Ecology Commission Rule 23 (“APC&EC Rule 23”). Unless specified otherwise, AR DEQ has incorporated by reference all federal regulations cited in this CAFO.

17. Although EPA has granted the State of Arkansas authority to enforce its own hazardous waste Program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

18. As the authorized provisions of the Arkansas's hazardous waste program operate in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be the authorized Arkansas program; however, for ease of reference, the federal citations will follow in brackets.

19. APC&EC Rule 23 § 261.2, [40 C.F.R. § 261.2], defines a "solid waste" as any discarded material that is not otherwise excluded under APC&EC Rule 23 § 261.4(a), [40 C.F.R. § 261.4(a)], or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munitions. Materials are solid waste, as defined in APC&EC Rule 23 § 261.2, [40 C.F.R. § 261.2], if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

20. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under APC&EC Rule 23 § 261.4(b), [40 C.F.R. § 261.4(b)], and it exhibits any of the characteristics of hazardous waste identified in APC&EC Rule 23 § Part 261, Subpart C, [40 C.F.R. Part 261, Subpart C], or it is listed in APC&EC Rule 23 § Part 261, Subpart D, [C.F.R. Part 261, Subpart D].

21. Characteristic hazardous wastes are assigned "D" codes in APC&EC Rule 23 § Part 261, Subpart C, [40 C.F.R. Part 261, Subpart C], depending on the specific hazardous characteristic that the waste exhibits.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

22. Arkansas Midland Railroad Company (“AKMD” or “Respondent”) is a corporation formed under the laws of Delaware and authorized to do business in Arkansas.

23. Respondent is a “person” and the “owner” of the Site within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), APC&EC Rule 23 Section 261.10, [40 C.F.R. § 260.10].

24. The Leased Track identified in Paragraph 1 of this CAFO is or was a “Facility” within the meaning of APC&EC Rule 23 Section 261.10, [40 C.F.R. § 260.10], at all times relevant to this CAFO, which is from October 13, 2021, through October 25, 2023, and the period during which the rail cars were stored on the Leased Track.

25. The Facility is or was at all times relevant to this CAFO not a permitted treatment storage and disposal (“TSD”) Facility as is required by APC&EC Rule 23 Parts 270.1 and 270.10, [C.F.R. Parts 270.1 and 270.10], for the storage of hazardous waste.

26. Pursuant to Section 3007 of RCRA, on November 29, 2022, EPA, Region 6 issued to W.R. GRACE & CO-CONN., a Connecticut corporation (“GRACE”) an information request (“Request”).

27. Pursuant to Section 3007 of RCRA, on December 16, 2022, EPA, Region 6 conducted a RCRA inspection at the ORG Chem facility that is located at 847 Blacksnake Road, Hot Springs, Arkansas 71913 (the “Inspection”).

28. On January 20, 2023, GRACE submitted responses to the Request (“Responses”).

29. In reviewing the Inspection Report, the Responses, and information received from AR DEQ (the "Investigation"), EPA confirmed that approximately 750,000 gallons of the Backlog Material were being stored by ORG Chem in thirty-four (34) rail cars that were located near 2200 Spring Street, Hot Springs, Arkansas on the Leased Track that is owned and at times managed by Respondent.

30. The approximately 750,000 gallons of Backlog Material identified in Paragraph 29 was generated by GRACE at its location in Norco, Louisiana.

31. At all times relevant to this CAFO, GRACE had two RCRA variances issued and/or transferred respectively by the AR DEQ and the Louisiana Department of Environmental Quality ("LDEQ") on December 3, 2013, and January 10, 2014 (the "Variances").

32. Individually and collectively the Variances excluded from regulations the COCT as solid waste and hence hazardous waste as long as GRACE complied with the terms of the Variances.

33. The LDEQ Variance is contingent on several factors to include:

- a. The LDEQ Variance may be transferred to a new owner or operator if such person respects the initial conditions;
- b. Reclamation activities begin within 24-48 hours after generation, as soon as received by MADI,³ so that no storage takes place;
- c. After reclamation the material will be returned to Respondent within 24-48 hours;
- d. Respondent will maintain title and ownership of the material; and
- e. There can be no resemblance of speculative accumulation that has taken/is taken place.

34. The ADEQ Variance was⁴ contingent on several factors and subject to provisions, which include:

- a. GRACE reclaiming and reusing the Crude OCT in a manner consistent with representations made in the ADEQ Variance application made on November 26, 2013;
- b. Reclamation activities begin within 24-48 hours after generation, as soon as the material is received by MADI, so that no storage takes place;

³ Mid-American Distillations Inc. is ORG Chem's predecessor.

⁴ The ADEQ Variance is no longer in place.

- c. After reclamation the material will be returned to Respondent within 24-48 hours of loading on the truck;
- d. There must be no adverse impact to human health or the environment;
- e. Respondent will maintain title to the material; and
- f. There should be no speculative accumulation in the management of the Crude OCT.

35. From the Investigation, EPA has determined that ORG Chem, GRACE's reclaimer/converter, was fully aware of the Variances and their conditions.

36. From the Investigation, EPA has determined that as early July 20, 2015, ORG Chem and GRACE knew or should have known that ORG Chem did not have the capability and/or the capacity to the reclaim the Crude OCT as GRACE purported to ADEQ and LDEQ.

37. From the Investigation, EPA has determined that GRACE on/or before July 20, 2015, and continuing through August 28, 2023, generated and shipped the Crude OCT from its facility in Louisiana to the ORG Chem facility in Arkansas.

38. From the Investigation, EPA confirmed that over 1.8 million gallons of the Backlog Material was stored in Arkansas in two locations six and one-half miles apart in at least twelve (12) vertical tanks, forty-four (44) frac tanks, and thirty-eight (38) rail cars.

39. From the Investigation, EPA confirmed that approximately half of the material that has been stored in Arkansas and described in Paragraph 38 of this CAFO was formerly stored by ORG Chem in thirty-four (34) rail cars on the Leased Track located near 2200 Spring Street, Hot Springs, Arkansas.

40. From the Investigation, which is supported by photographic evidence, the rail cars identified in Paragraphs 38 and 39 of this CAFO were unsupervised, without security of any kind, not enclosed in any confined area and were located amongst and near to residents, a school, a creek, and other nearby businesses.

41. According to information provided by Respondent to EPA, Respondent asserts that it conducted weekly inspections⁵ of the Facility and management personnel were present at the Facility up to three (3) times per week. And from about August 18, 2023, Respondent initiated daily inspections of the Facility and the rail cars until the last rail car was removed on October 25, 2023.

42. From the Investigation, EPA has determined that the storage of the Backlog Material expanded from the ORG Chem facility, on or about October 2021 to include the 34 rail cars, which were located on the Leased Track near 2200 Spring Street, Hot Springs, Arkansas.

43. From the Investigation, EPA has determined that a lease was signed on October 13, 2021, between ORG Chem and Respondent allowing ORG Chem to store rail cars owned or leased by ORG Chem on the Leased Track, and expressly prohibited ORG Chem from storing hazardous waste in any rail car that would be placed on the Leased Track (“Lease”).

44. From the Investigation, EPA has determined that Respondent from time-to-time transported the rail cars, as directed by ORG Chem and in accordance with Respondent’s common carrier obligations, between the ORG Chem facility and the Leased Track near Spring Street, Hot Springs, Arkansas. The required transportation documentation generated and provided by ORG Chem to Respondent, when ORG Chem directed Respondent to place the rail cars on the Leased Track did not identify the Backlog Material as “waste” or “hazardous waste.” Respondent did not own or lease the 34 rail cars used by ORG Chem to store the Backlog Material.

⁵ From EPA’s knowledge, the weekly inspections described by Respondent did not have all the elements of a RCRA inspection required by a RCRA Permit.

45. From the Investigation, EPA has determined the Backlog Material identified in Paragraphs 38 through 42 of this CAFO is a “Solid Waste” as defined by APC&EC Rule 23 § 261.2, [40 C.F.R. § 261.2].

46. From the Investigation, EPA has determined that the Backlog Material exhibits the characteristics for ignitability pursuant to APC&EC Rule 23 § 261.21, [40 C.F.R. §261.21], bearing the hazardous waste codes D001.

47. From the Investigation, EPA has determined that the Backlog Material identified in Paragraphs 38 through 42 of this CAFO, beginning as early as July 15, 2015, is a “hazardous waste” as defined at APC&EC Rule 23 §261.21, [40 C.F.R. §261.21].

48. From the Investigation, EPA has determined that the Backlog Material identified in this CAFO is not excluded from any of the exclusions set forth in APC&EC Rule 23 §§ 261.4(a) and (b), [40 C.F.R. §§ 261.4(a)and (b)], or by Variances identified in this CAFO and issued respectively by ADEQ and LDEQ.

49. On or about April 12, 2023, EPA informed Respondent of its Investigation, and EPA’s conclusion that the Backlog Material in the rail cars on the Leased Track contained Hazardous waste.

50. From the Investigation, EPA has concluded that Respondent is or should have been aware that it has been subject to all environmental regulations, including RCRA as this obligation (“each party shall comply”) is an element of the Lease agreement between Respondent and ORG Chem.

51. At all times relevant this CAFO, ORG Chem stored hazardous waste on Respondent’s Leased Track, which Respondent owns and is identified in Paragraph one (1) of this CAFO.

52. The Facility owned by Respondent is not a RCRA Subtitle C permitted TSD

facility as defined by the APC&EC Rule 23, Parts 270.1 and 270.10, [C.F.R. Parts 270.1 and 270.10].

53. Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at APC&EC Rule 23 Parts 262, 265, and/or 270, [40 C.F.R. Parts 262, 265, and/or 270].

RCRA ALLEGATION

Claim 1. Failure to File a RCRA 3010 Notification

54. The allegations in Paragraphs 1-53 are realleged and incorporated herein by reference.

55. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person who owns or operates a facility for the treatment, storage, and/or disposal of regulated waste must notify the EPA of their activities, including location and general description of the activity and the regulated waste being handled and/or managed. Respondent must submit the information required in the notification of Subtitle C RCRA Activities Instructions and Form by completing the RCRA Subtitle C Site Identification Form (EPA Form 8700-12).

56. From at or about October 13, 2021, through at or about October 25, 2023, the hazardous waste identified in Paragraphs 45 and 46 of this CAFO was stored by ORG Chem at Respondent's Facility identified in Paragraph 1 of this CAFO.

57. Respondent did not notify the EPA, nor the authorized state, of the hazardous waste stored at its Facility by ORG Chem, and did not submit the required EPA Form 8700-12, in violation of Section 3010 of RCRA, 42 U.S.C. § 6930.

58. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 40 C.F.R. Part 19, EPA

may assess a civil penalty of not more than \$25,000, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issued requiring compliance or both.

Claim 2. Failure to Apply and Obtain RCRA Storage Permit

59. The allegations in Paragraphs 1-58 are realleged and incorporated herein by reference.

60. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the treatment, storage, and/or disposal of hazardous waste without a permit or interim status.

61. Pursuant to Regulations No. 23 § 270.1(c), [40 C.F.R. § 270.1(c)], a RCRA Permit is Required for the “treatment,” “storage,” or “disposal,” of any “hazardous wastes” as identified or listed in Regulation No 23 § 261, [40 C.F.R. Part 261].

62. Regulation No 23 § 270 Subpart B, [40 C.F.R Part 270 Subpart B] sets forth the general applicable requirements that owners and operators who treat, store, and/or dispose of hazardous waste must fulfil.

63. Pursuant to Regulation No. 23 § 270.10, [40 C.F.R. § 260.10], storage is defined as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is stored elsewhere, treated, and/or disposed of.

64. From the Investigation and as set forth in Paragraphs 45 and 46 of this CAFO, the Backlog Material (in its original and/or partially altered stated), which had been stored by ORG Chem in the rail cars at Respondent’s Facility and identified in Paragraph 1 of this CAFO was a hazardous waste that exhibited characteristics for ignitability pursuant to APC&EC Rule 23 §261.21, [40 C.F.R. §§ 261.21], bearing the hazardous waste codes D001.

65. Respondent owns the Leased Track where the rail cars were located in which ORG Chem stored the hazardous waste identified in Paragraphs 45, 46, and 64 of this CAFO and at

its Facility identified in Paragraphs 1 of this CAFO before the hazardous waste was shipped off for storage elsewhere, treatment, and/or disposal.

66. Respondent does not have a RCRA storage permit for its Facility nor was the Facility at all times relevant to this CAFO an interim status Facility.

67. Hazardous Waste was therefore stored by ORG Chem at or on Respondent's Facility without a RCRA permit or interim status in violation of Regulation No. 23 §§ 270.1 and 270.10, [40 C.F.R. §§ 270.1 and 270.10].

68. Pursuant to Section 3008 of RCRA, , 42 U.S.C. § 6928(a) and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,000, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issued requiring compliance or both.

V. COMPLIANCE ORDER

69. Respondent is hereby ordered pursuant to Section 3008(a) of RCRA, 42 U.S.C § 6928(a) and upon the effective date of this CAFO, Respondent shall immediately cease from accepting any hazardous waste for storage and/or management at its Facility identified in Paragraph 1 of this CAFO.

70. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer or officer's designee of Respondent and shall include the following certification:

I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 fine and imprisonment for knowing violations.

a) Copies of all documents required by this CAFO may be sent to the following:

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division
RCRA Enforcement Section (“ECDSR”)
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe

71. In the alternative and as set forth in Subsection iv of Section VI of this CAFO (Notification), documents required by this CAFO may be sent to Mr. Fred Deppe via email at Deppe.Fred@EPA.gov.

VI. TERMS OF SETTLEMENT

i. Penalty Provisions

72. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and upon consideration of the entire record herein, including the above referenced Factual Allegations and Alleged Violations, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent’s good faith efforts to comply with the applicable regulations, which includes Respondent’s cooperation throughout the negotiation and information provided to EPA, Region 6 during the Investigation, it is ordered that Respondent be assessed a civil penalty of Nine Hundred and Ten Thousand Eight Hundred and Ninety-Five Dollars (\$910,895.00) that shall be paid by Respondent within thirty (30) days of the effective date of this CAFO.

Payments shall be made by AKMD by one of the following methods:

a. By mailing a bank check, cashier’s check, or certified check payable to “Treasurer, United States,” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks **must** use a United States Bank to send wire transfer to the US EPA

c. By signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.) a bank check, cashier's check, or certified check payable to: "Treasury, United States," to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 1-314-418-1028

d. By Automatic clearing house (ACH) payment through Vendor Express using:

US Treasury REX/Cashlink Receiver
ABA: 051036706
Account number 310006 Environmental Protection Agency
CTX Format Transaction Code 22 -checking
Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

e. Through www.pay.gov using a credit or debit card (Visa, MasterCard, American Express, and Discovery) or checking accounting information.

"In the matter of Arkansas Midland Railroad Company, Docket No. RCRA-06-2023-0946" shall be clearly marked on the check or other remittance, to ensure proper credit. Respondent's

adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

73. The Respondent shall send a simultaneous notice of such payment to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75202-2733
Vaughn.Lorena@epa.gov

Jeff Yurk, Manager
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and 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). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for

the thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30)-day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b).

75. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Stipulated Penalties

76. In addition to any other remedies or sanctions available to EPA, Region 6, if the Respondent fails or refuses to comply with any provision of this CAFO and within the agreed upon time period, then the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$1,500.00
16th through 30th day	\$2,000.00
31st day and beyond	\$10,000.00

77. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected and/or compliance is achieved, as determined by EPA, Region 6.

The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection VI.i. (Penalty Provision) of this CAFO.

78. The Respondent shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

Jeff Yurk, Manager
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Manager, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.Marcia@epa.gov

79. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section VI, concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

80. If Respondent disputes the basis for imposition of stipulated penalties, then the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

iii. Dispute Resolution

81. If Respondent objects to any decision or directive of EPA, Region 6 regarding Section V (Compliance Order) or Subsection VI.ii. (Stipulated Penalties), then Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Jeff Yurk, Manager
Waste Enforcement Branch (ECDS)

Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov.

Manager, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.Marcia@epa.gov.

82. The Waste Enforcement Branch Manager (“Branch Manager”) or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA, Region 6’s receipt of the Respondent’s written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Manager and the Respondent, the agreement shall be reduced to writing and signed by the Branch Manager and the Respondent and incorporated by reference into this CAFO.

83. If no agreement is reached between the Branch Manager and the Respondent within that time, then the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division (“Division Director”) or his/her designee. The Division Director and the Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, then the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second fifteen (15)-day period, then the Division Director shall provide a written statement of EPA, Region 6’s decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

84. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Subsection on Modification, below.

iv. Notification

85. Unless otherwise specified elsewhere in this CAFO, whenever written notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the email addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA: Jeff Yurk, Manager
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Respondent: William Keough
President, AKMD
1940 Enchanted Way, Suite 201
Grapevine, TX 76051
William.Keough@gwrr.com

Office of General Counsel
Genesee & Wyoming Railroad Services, Inc.
20 West Avenue
Darien, CT 06820

Copies to:

afergus@gwrr.com
catherine.pushchak@gwrr.com
bellc@gtlaw.com

v. Modification

86. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

vi. Retention of Enforcement Rights

87. EPA, Region 6 does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

88. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from each of Respondent's Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws or regulations.

vii. Indemnification

89. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by a Respondent in carrying out the activities required by this CAFO.

viii. Record Preservation

90. Respondent shall preserve, during the pendency of this CAFO, all records in its possession or in the possession of its, employees, agents, contractors, or successors, which relates to Respondent's completion of the requirements of Section V (Compliance Order) of this CAFO regardless of any document retention policy to the contrary.

ix. Cost

91. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

x. Tax Reporting

92. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and

26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. Notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the **Effective Date of this Order per paragraph 95**; and

ii. Provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email.

xi. Termination and Satisfaction

93. When Respondent believes that it has complied with all the requirements of this CAFO, including payment of the Subsection VI.i. (Civil Penalty), Respondent shall certify in writing and in accordance with the certification language set forth in Section V (Compliance Order), Paragraph 69 of this CAFO. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA’s receipt of Respondent’s certification, this CAFO will be terminated based on EPA’s receipt of Respondent’s certification.

94. This CAFO resolves all claims and violations as set forth in Section IV, Factual Allegations and Alleged Violations. Further, Respondent is released from all liabilities for federal civil penalties for the violations alleged in this CAFO that relate to the Facility identified in Paragraph 1 of this CAFO as provided in 40 C.F.R. 40 C.F.R. § 22.18(c).

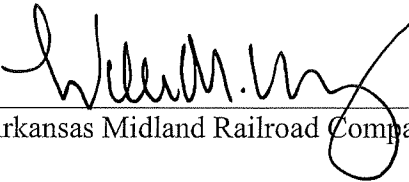
xii. Effective Date of Settlement

95. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 2/29/2024


Arkansas Midland Railroad Company

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER (cont.):**

FOR THE COMPLAINANT:

Date: March 1, 2024

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6, Dallas, Texas 75270

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Regional Judicial Officer
Thomas Rucki

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RCRA Consent Agreement and Final Order, Docket No. RCRA-06-2023-0946, was filed with me, the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in following manner to the email addresses below:

Copy via Email to Complainant, EPA:

Moncrieffe.marcia@epa.gov

Copy via Email to Respondent:

belc@gtlaw.com

Arkansas Midland Railroad Company
Office of General Counsel
Genesee & Wyoming Railroad Services, Inc.
20 West Avenue
Darien, CT 06820

Name and Date: Lorena Vaughn
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2102