

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

In the Matter of)
)
Kemin Industries, Inc.) Docket No. RCRA-07-2022-0009
Des Moines, Iowa)
EPA ID. No. IAD005274287,) EXPEDITED SETTLEMENT
) AGREEMENT AND FINAL ORDER
Respondent.)

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”) and 40 C.F.R. § 22.13(b).
2. By copy of this letter, the EPA is providing the state of Iowa with notice of the referenced violations of Subtitle C of RCRA as required by Section 3008(a)(2).
3. Kemin Industries, Inc. (“Respondent”) is the owner or operator of the facility at 2100 Maury Street, Des Moines, Iowa (“Facility”). An inspection of the facility was performed on November 19, 2020. The EPA alleges that Respondent violated the following requirements of the RCRA hazardous waste management program:
 - a) 40 C.F.R. § 262.15(a)(4) states that a container in a satellite accumulation area holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste, or when temporary venting of a container is necessary for the proper operation of equipment or to prevent dangerous situations, such as build-up of extreme pressure. On November 19, 2020, an inspector found two 4-liter glass containers of Acrylonitrile (ACN) waste and one 2.5-gallon container of 1.5 mL High-performance liquid chromatography (HPLC) vial waste in Building 4 in violation of 40 C.F.R. § 262.15(a)(4).
 - b) 40 C.F.R. § 262.15(a)(5)(i) states that a generator must mark or label its container in a satellite accumulation area with the words “hazardous waste.” On November 19, 2020, an inspector found:
 - a) in a satellite accumulation area in Building “MAC,” a bottle that had on its label “Halides Chemical Waste” but did not have the words “hazardous waste” on its label, in violation of 40 C.F.R. § 262.15(a)(5)(i);

- b) in a satellite accumulation area in Building “MAC,” one container of HPLC waste which did not have the words “hazardous waste” on its label, in violation of 40 C.F.R. § 262.15(a)(5)(i);
 - c) in a satellite accumulation area within Building 4, two glass containers of ACN waste and one container of HPLC waste which did not have the words “hazardous waste” on their labels, in violation of 40 C.F.R. § 262.15(a)(5)(i).
- c) 40 C.F.R. § 262.15(a)(5)(ii) states that a generator must mark or label its containers in a satellite accumulation area with an indication of the hazards of the contents. On November 19, 2020, an inspector found:
- a) in a satellite accumulation area within Building “MAC,” a bottle that had on its label “Halides Chemical Waste” but did not have an indication of the hazards of the contents on its label, in violation of 40 C.F.R. § 262.15(a)(5)(ii);
 - b) in a satellite accumulation area within Building “MAC,” one container of HPLC waste which did not have an indication of the hazards of the contents on its label, in violation of 40 C.F.R. § 262.15(a)(5)(ii);
 - c) in a satellite accumulation area within Building 4, two glass containers of ACN waste and one container of HPLC waste did not have an indication of the hazards of the contents on their labels, in violation of 40 C.F.R. § 262.15(a)(5)(ii).
- d) 40 C.F.R. § 262.17(a)(1)(iv)(A) states that a large quantity generator must ensure that a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste. On November 19, 2020, an inspector found three open containers containing acetone and pump oil waste in Building 5, in violation of 40 C.F.R. § 262.17(a)(1)(iv)(A).
- e) 40 C.F.R. § 262.17(a)(1)(vii)(C) states that a large quantity generator must ensure that a container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. On November 19, 2020, an inspector found lactic acid, sodium hydroxide, soybean oil, phosphoric acid, 2-puradeanstyrene, propionic acid, and sorbitan monooleate waste containers stored in one cabinet in Building “MAC.” The close storage of several incompatible hazardous wastes and other materials is a violation of 40 C.F.R. § 262.17(a)(1)(vii)(C).
- f) 40 C.F.R. § 262.17(a)(5)(i)(A) states that a large quantity generator must mark or label its accumulation containers with the words “hazardous waste.” On November 19, 2020, and inspector found:

- a) Three containers in Building 5 containing acetone and pump oil waste without any labels on them, in violation of 40 C.F.R. § 262.17(a)(5)(i)(A);
 - b) Seven containers in Building “MAC” of lactic acid were not labeled “hazardous waste,” in violation of 40 C.F.R. § 262.17(a)(5)(i)(A);
 - c) Three bottles in Building “MAC” of sodium hydroxide were not labeled “hazardous waste,” in violation of 40 C.F.R. § 262.17(a)(5)(i)(A);
 - d) One container in Building “MAC” of phosphoric acid was not labeled “hazardous waste,” in violation of 40 C.F.R. § 262.17(a)(5)(i)(A);
 - e) One container in Building “MAC” of propionic acid was not labeled “hazardous waste,” in violation of 40 C.F.R. § 262.17(a)(5)(i)(A).
- g) 40 C.F.R. § 262.17(a)(5)(i)(B) states that a large quantity generator must mark or label its containers with an indication of the hazards of the contents. On November 19, 2020, an inspector found:
- a) Three containers in Building 5 containing acetone and pump oil waste without any labels on them, in violation of 40 C.F.R. § 262.17(a)(5)(i)(B);
 - b) Seven containers in Building “MAC” containing hazardous waste that did not have a label with the indication of the nature of the hazards of the contents, in violation of 40 C.F.R. § 262.17(a)(5)(i)(B).
 - c) Three bottles in Building “MAC” of sodium hydroxide that that did not have a label with the indication of the nature of the hazards of the contents, in violation of 40 C.F.R. § 262.17(a)(5)(i)(B).
 - d) One container in Building “MAC” of phosphoric acid that did not have a label with the indication of the nature of the hazards of the contents, in violation of 40 C.F.R. § 262.17(a)(5)(i)(B).
 - e) One container in Building “MAC” of propionic acid that did not have a label with the indication of the nature of the hazards of the contents, in violation of 40 C.F.R. § 262.17(a)(5)(i)(B).
- h) 40 C.F.R. § 262.17(a)(5)(i)(C) states that a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container. On November 19, 2020, an inspector found:
- a) Three containers in Building 5 containing acetone and pump oil waste without any labels on them, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);
 - b) Five four-liter amber glass bottles in Building “MAC” of waste containing hydrochloric acid and phosphoric acid that did not contain accumulation start dates on their labels, which is also in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);
 - c) Seven containers in Building “MAC” of lactic acid that did not contain accumulation start dates on their labels, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);

- d) Three containers in Building "MAC" of sodium hydroxide that did not contain accumulation start dates on their labels, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);
 - e) One container in Building "MAC" of phosphoric acid that did not contain accumulation start dates on its label, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);
 - f) One container in Building "MAC" of 2-puradeanstyrene that did not contain accumulation start dates on its label, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C);
 - g) One container in Building "MAC" of propionic acid that did not contain accumulation start dates on its label, in violation of 40 C.F.R. § 262.17(a)(5)(i)(C).
- i) 40 C.F.R. § 262.17(a)(7)(iii) states that facility personnel at a large quantity generator must successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. Facility personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of this section. On November 19, 2020, an inspector found that personnel training was held biennially at the facility, in violation of 40 C.F.R. § 262.17(a)(7)(i).
- j) 40 C.F.R. Subpart M sets forth the Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators:
- a) 40 C.F.R. § 262.262(b) states that a large quantity generator that first becomes subject to these provisions after May 30, 2017, or a large quantity generator that is otherwise amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders or, as appropriate, the Local Emergency Planning Committee. On November 19, 2020, an inspector found that no quick reference guide was present, in violation of 40 C.F.R. § 262.262(b).
 - b) 40 C.F.R. § 262.261 requires that a contingency plan must include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. On November 19, 2020, an inspector found that the contingency plan did not contain evacuation procedtûres, in violation of 40 C.F.R. § 262.261(f).
- 4) The EPA and Respondent agree that settlement of this matter for a civil penalty of twelve-thousand five-hundred dollars (\$12,500.00) is in the public interest. Respondent certifies that it has provided a deposit for payment for the full civil penalty amount, and that such payment identified Respondent by name and docket number, was made by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

- 5) A copy of the check or other information confirming payment shall simultaneously be emailed to the following:
- Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and
- Milady Peters, Paralegal
peters.milady@epa.gov
6. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) agrees to release funds held on deposit as payment to the EPA for the civil penalty upon final EPA approval of this Agreement; (6) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (7) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA; and (8) consents to electronic service of the filed ESA to the following email address:
Joel.Tichy@Kemin.com
7. By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violation has been corrected, and (2) Respondent is submitting proof of payment of the civil penalty with this Agreement.
- 8) The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it. Upon the effective date of this Agreement, payment of the civil penalty shall constitute full settlement of the civil claims alleged herein.
- 9) EPA reserves all of its rights to take an enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
- 10) Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. The EPA reserves the right to take any

enforcement action with respect to any other past, present, or future violations of FIFRA or any other applicable law.

- 11) The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.
- 12) Each party shall bear its own costs and fees, if any.
- 13) This Agreement is binding on the parties signing below.

IT IS SO AGREED,

Elizabeth A. Nelson

Name (print)

VP and General Counsel

Title (print)

Elizabeth A. Nelson

Signature

Feb. 16, 2022

Date

APPROVED BY EPA:

IT IS SO AGREED,

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date

Katherine Kacsur, Attorney
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Expedited Settlement Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date _____

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of EPA Docket No. RCRA-07-2022-0009 was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Katherine Kacsur
U.S. Environmental Protection Agency, Region 7
Kacsur.Katherine@epa.gov

Copy via Electronic Mail to Respondent:

Joel Tichy
Senior Environmental Health and Safety Manager
Kemin Industries, Inc.
Joel.Tichy@kemin.com

Dated this _____ day of _____, _____.

Signed