

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

Received by  
EPA Region 7  
Hearing Clerk

<b>In the Matter of</b>	)	
	)	
BG Products, Incorporated	)	<b>Docket No. RCRA-07-2022-0040</b>
Wichita, Kansas	)	
EPA ID. No. KSR000011551	)	<b>EXPEDITED SETTLEMENT</b>
	)	<b>AGREEMENT AND FINAL ORDER</b>
<b>Respondent.</b>	)	

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**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 Kansas with notice of the referenced violations of Subtitle C of RCRA as required by Section 3008(a)(2).
- 3) BG Products, Incorporated (“Respondent”) is the owner or operator of a facility located at 740 South Wichita Street, Wichita, Kansas (“Facility”). The EPA inspected the facility on August 25, 2021. The EPA alleges that Respondent violated the following requirements of the RCRA hazardous waste management program:
  - a. 40 C.F.R. § 262.11 requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. At the time of the EPA inspection, four satellite waste accumulation containers holding wipes, rags, and pads were contaminated with unknown substances and no hazardous waste determination had been done in violation of 40 C.F.R. § 262.11.
  - b. 40 C.F.R. § 262.34(a)(1)(i), as adopted by KAR 28-31-262, states that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 C.F.R. Part 265. At the time of the EPA inspection, four sinks had residual titration waste within the sink basin and were not within an appropriate satellite container in violation of 40 C.F.R. § 262.34(a)(1)(i).
  - c. 40 C.F.R. § 265.31 requires that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. At the time of the EPA inspection, a spill of sodium nitrite was discovered near Kettle 8 and had not been properly disposed of within a month. The sodium nitrite spill was

near incompatible materials. Respondent's failure to properly maintain or operate the Facility is a violation of 40 C.F.R. § 265.31.

- 4) The EPA and Respondent agree that settlement of this matter for a civil penalty of seven thousand five hundred dollars (\$7,500.00) 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: *jmurphy@bgprod.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 violations have 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) The 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,

Justin L. Murphy  
Name (print)

EHS Manager  
Title (print)

      3/15/22  
Signature      Date

APPROVED BY EPA:

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Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

Date

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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**  
**To be completed by EPA**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via e-mail to Complainant:

Kate Kacsur, Office of Regional Counsel  
*kacsur.katherine@epa.gov*

Tiffany DeLong, Enforcement and Compliance Assurance Division  
*Delong.Tiffany@epa.gov*

Copy via e-mail to Respondent:

Justin Murphy, Environmental, Health, and Safety Manager  
BG Products, Incorporated  
*jmurphy@bgprod.com*

Copy via e-mail to the State of Kansas:

Julie Coleman, Director  
Bureau of Waste Management  
Kansas Department of Health and Environment  
*Julie.Coleman@ks.gov*

Amy Thompson  
Kansas Department of Health and Environment  
*amy.e.thompson@ks.gov*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_