

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

Aug 19, 2024

6:09 am

U.S. EPA REGION 4
HEARING CLERK

In the Matter of:

Bakelite Chemicals, LLC
200 Ampac Road
Conway, North Carolina 27820
EPA ID No.: NCD980559975,

Respondent.

Docket No RCRA-04-2024-4001(b)

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

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without the Respondent's admission of violation or adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. The Respondent is Bakelite Chemicals, LLC, a limited liability corporation doing business in Northampton County, North Carolina. This proceeding pertains to the Respondent's facility located at 200 Ampac Road, Conway, North Carolina (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found generally in the North Carolina General Statutes (N.C.G.S.), Chapter 130A, Article 9, N.C.G.S. §§ 130A-290 et seq. [Subtitle C of RCRA, 42 U.S.C. §§ 6921 et seq.], and the North Carolina Hazardous Waste Management Rules (NCHWMR), 15A N.C.A.C. 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270, 273, and 279].
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 130A-294(c) of the NCSWML, N.C.G.S. § 130A-294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15A N.C.A.C. 13A .0107 [40 C.F.R. Part 262].
12. Sections 130A- 294(c) and (g) of the NCSWML, N.C.G.S. § 130A- 294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 15A N.C.A.C. 13A .0109 (permitted) and 15A N.C.A.C. 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and

is not otherwise excluded from regulation as a hazardous waste by 15A N.C.A.C. 13A .0106(a) [40 C.F.R. § 261.4(b)].

15. Pursuant to 15A N.C.A.C. 13A .0106(a) and (c) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 15A N.C.A.C. 13A .0106(c) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to 15A N.C.A.C. 13A .0106(c) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 15A N.C.A.C. 13A .0106(c) [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
18. Pursuant to 15A N.C.A.C. 13A .0106(c) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous.
19. Pursuant to 15A N.C.A.C. 13A .0106(c) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for barium is identified with the EPA Hazardous Waste Number D005.
20. Pursuant to 15A N.C.A.C. 13A .0106(c) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for o-cresol is identified with the EPA Hazardous Waste Number D023.
21. Pursuant to 15A N.C.A.C. 13A .0118(a) [40 C.F.R. § 279.1], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
22. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 15A N.C.A.C. 13A .0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
23. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
24. Pursuant to Section 130A-290(a)(22) of the NCSWML, N.C.G.S. § 130A-290(a)(22) [40 C.F.R. § 260.10], a “person” includes a corporation.
25. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”

26. Pursuant to 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10], a Large Quantity Generator (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste in a calendar month.
27. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.15(a)], a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.16(b) or § 262.17(a)], except as required in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.15(a)(7) and (8)], provided that the generator complies with the satellite accumulation area conditions listed in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.15] (hereinafter referred to as the "SAA Permit Exemption").
28. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.15(a)(5)], which is a condition of the SAA Permit Exemption, a generator is required to mark or label its containers with the words "Hazardous Waste" and with an indication of the hazards of the contents.
29. Pursuant to 15A N.C.A.C. 13A .0118(c) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."
30. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17], an LQG may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17] (hereinafter referred to as the "LQG Permit Exemption").
31. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(u) [40 C.F.R. § 265.1085(b)(1)] and is a condition of the LQG Permit Exemption, for a tank with a design capacity less than 75 cubic meters that manages hazardous waste with an average volatile organic concentration of at least 500 parts per million by weight and a maximum organic vapor pressure below 76.6 kPa, the generator shall control air pollutant emissions in accordance with the Tank Level 1 controls.
32. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(u) [40 C.F.R. § 265.1085(c)(2)(iii)(A)] and is a condition of the LQG Permit Exemption, a generator controlling air pollutant emissions from a tank using Tank Level 1 controls shall equip the tank with a fixed roof designed so that each opening in the fixed roof, and any manifold system associated with the fixed roof shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps or other open spaces in the closure device or between the perimeter of the opening and the closure device.

33. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(u) [40 C.F.R. § 265.1085(c)(4)(ii) and (iv)] and is a condition of the LQG Permit Exemption, the generator controlling air pollutant emissions from a tank using Tank Level 1 controls shall, at least once every year, visually inspect the fixed roof and its closure devices to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. The owner or operator shall maintain a record of the inspection.
34. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.195(b)], and is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks must conduct daily inspections of tank overfill/spill control equipment to ensure that it is in good working order; 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, to detect erosion or signs of releases of hazardous waste.
35. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.193(c)(4)] and is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in a tank system must at a minimum provide secondary containment systems that are sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.
36. Pursuant to 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], which incorporates 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.193(e)(1)(iii)] and is a condition of the LQG Permit Exemption, external liner secondary containment systems must be free of cracks or gaps.

IV. EPA's FINDINGS OF FACTS

37. The Respondent's Facility is located at 200 Ampac Road, Conway, North Carolina 27820.
38. The Respondent owns and operates a chemical manufacturing facility that manufactures thermosetting resins, powdered resins, and formaldehyde solutions. Products manufactured at the Facility service the particle board, protective coatings, and laminate industries.
39. The Respondent generates used oil.
40. The Respondent generates hazardous waste hydranal, which is identified with the EPA Hazardous Waste Numbers D001 and D002.

41. The Respondent generates hazardous waste containing o-cresol and barium from the resin manufacturing process. This hazardous waste is identified with the EPA Hazardous Waste Numbers D005 and D023; it has an average volatile organic concentration of at least 500 parts per million by weight at the point of origination; and it has a maximum organic vapor pressure below 76.6 kPa. The Respondent stores hazardous waste containing o-cresol and barium from the resin manufacturing process in a 10,000-gallon hazardous waste storage tank, Tank S-20.
42. The Facility has been an LQG since 2004.
43. The Respondent is the legal owner of the Facility.
44. On March 23, 2023, the EPA along with the NCDEQ conducted a RCRA Compliance Evaluation Inspection (CEI) at the Respondent's Facility. The EPA's findings from the CEI were documented in a Report transmitted to the Respondent via email on July 18, 2023.
45. At the time of the CEI, the inspectors observed a one-liter container accumulating hazardous waste hydranal in a SAA. The container was not marked with an indication of the hazards of the contents.
46. At the time of the CEI, the inspectors observed drain pans accumulating used oil. The drain pans were not labeled with the words "Used Oil."
47. At the time of the CEI, the inspectors observed that the manway on top of hazardous waste storage Tank S-20 was equipped with a Tank Level 1 air pollutant emission control cover, which was not "closed." Although the metal cover is designed to close the manway opening by attaching to it using four bolts, inspectors observed that the cover was affixed to the manway opening using only one bolt and a rope, which was tied from one of two handles on the cover to the railing on top of Tank S-20.
48. At the time of the CEI, the inspectors noted that the Respondent was not conducting annual visual inspections of the fixed roof and its closure devices on hazardous waste Tank S-20.
49. At the time of the CEI, the inspectors noted that the Respondent's employees were not performing daily inspections of the top of hazardous waste Tank S-20. The inspectors observed pooled liquids and debris in the secondary containment area, which obscured a portion of the secondary containment system so that the construction materials were not visible for inspection.
50. At the time of the CEI, the inspectors observed liquid material and windblown debris which appeared to have been collecting on the floor of the secondary containment of hazardous waste storage Tank S-20 for more than 24 hours.
51. At the time of the CEI, pooled liquids and debris obscured a portion of Tank S-20's secondary containment area so that the inspectors were unable to determine if cracks or gaps were present in the secondary containment concrete. Subsequent to the inspection, the Respondent hired a professional engineer to independently evaluate the secondary containment for cracks or gaps after hydro-blasting the area. The engineer's findings were included in a reported dated

November 3, 2023. In this report, the engineer stated that “surface concrete cracks in the secondary containment walls at various locations were found, but none were through-wall cracks”, and recommended that hairline cracks be patched with concrete or that sealant be applied to the entire wall inside and out. The engineer also included that “[n]o cracks or gaps in the secondary containment floor were noted” later in the report.

V. ALLEGED VIOLATIONS

52. The EPA alleges that the Respondent is a “person” as defined in N.C.G.S. § 130A-290(a)(22) [40 C.F.R. § 260.10].
53. The EPA alleges that the Respondent is the “owner” and “operator” of a “facility” located at 200 Ampac Road, Conway, North Carolina, as those terms are defined in 15A N.C.A.C. 13A .0102(b) [40 C.F.R. § 260.10].
54. The EPA alleges that the Respondent generates “solid waste” and “hazardous waste” as those terms are defined in 15A N.C.A.C. 13A .0106(a) [40 C.F.R. §§ 261.2 and 261.3].
55. The EPA alleges that the Respondent was accumulating hazardous waste hydranal in a one-liter container, which was not marked with an indication of the hazard of the contents, in a SAA. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the SAA Permit Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.15(a)(5)(ii)], by failing to mark or label a container of hazardous waste with indications of the hazards of the contents.
56. The EPA alleges that the Respondent was accumulating used oil in drain pans, which were not labeled with the words “Used Oil.” The EPA therefore alleges that the Respondent violated 15A N.C.A.C. 13A .0118(c) [40 C.F.R. § 279.22(c)(1)], by failing to label containers used to store used oil with the words “Used Oil.”
57. The EPA alleges that the Respondent was managing hazardous waste in Tank S-20, which was equipped with a manway opening that was not closed as designed. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the LQG Permit Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], by failing to close a Tank Level 1 air pollutant emission control device in accordance with 15A N.C.A.C. 13A .0110(u) [40 C.F.R. § 265.1085(c)(2)(iii)(A)].
58. The EPA alleges that the Respondent failed to conduct annual visual inspections of the fixed roof and its closure devices on hazardous waste Tank S-20. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the LQG Permit

Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], by failing to conduct annual visual inspections of the fixed roof and its Tank Level 1 air pollutant emission control devices in accordance with 15A N.C.A.C. 13A .0110(u) [40 C.F.R. § 265.1085(c)(4)(ii) and (iv)].

59. The EPA alleges that the Respondent failed to conduct daily inspections of the top of hazardous waste Tank S-20. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the LQG Permit Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], by not conducting daily inspections of the above ground portions of the tank system and the construction materials and the area immediately surrounding the externally accessible portion of the tank system in accordance with 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.195(b)].
60. The EPA alleges that the Respondent failed to remove the debris and accumulated liquid accumulating on the floor of the secondary containment of hazardous waste Tank S-20. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the LQG Permit Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], by not removing the accumulated debris and liquid from the secondary containment area in accordance with 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.193(c)(4)].
61. The EPA alleges that the Respondent failed to keep the secondary containment associated with hazardous waste Tank S-20 free of cracks or gaps. The EPA therefore alleges that the Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because the Respondent failed to meet a condition of the LQG Permit Exemption given in 15A N.C.A.C. 13A .0107(a) [40 C.F.R. § 262.17(a)(2)], by not ensuring the hazardous waste tank secondary containment system is maintained free of cracks or gaps in accordance with 15A N.C.A.C. 13A .0110(j) [40 C.F.R. § 265.193(e)(1)(iii)].

VI. STIPULATIONS

62. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
63. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), the Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;

- e. waives any right-to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

64. For the purpose of this proceeding, the Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against the Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering the Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of this CAFO.

65. By executing this CAFO, the Respondent certifies to the best of its knowledge that the Facility is currently in compliance with all relevant requirements of the authorized State program found in the NCSWML and the NCHWMR, and the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected at the Facility.

66. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

67. The Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **ONE HUNDRED THIRTY-THOUSAND DOLLARS (\$130,000.00)**, which is to be paid within 30 days of the Effective Date of this CAFO.

68. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

- a. If the Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

- b. If the Respondent sends payment by non-standard mail delivery (e.g., FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

- c. If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

- d. If paying by ACH, the Respondent shall remit payment to:

US Treasury REX / Cashlink ACH 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

69. The Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Alan Newman
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
newman.alan@epa.gov

70. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. RCRA-04-2024-4001(b).
71. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if the Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within 30 days, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a);
 - b. Non-Payment Penalty. On any portion of a civil penalty more than 90 days past due, the Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c); and
 - c. Monthly Handling Charge. The Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)-(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
72. In addition to what is stated in the prior Paragraph, if the Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);

- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H);
- c. suspend or revoke the Respondent's licenses or other privileges, or suspend or disqualify the Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17); and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

73. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

74. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send a completed Form 1098-F ("Fines, Penalties, and Other Amounts") to the Internal Revenue Service (IRS) annually with respect to any court order and settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that the 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." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (for example, a copy of Form 1098-F). In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and the Respondent herein agrees, that:

- a. The Respondent shall complete a Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. The Respondent shall therein certify that its completed Form W-9 includes the Respondent's correct Tax Identification Number (TIN) or that Respondent has applied and is waiting for issuance of a TIN;
- c. The Respondent shall email its completed Form W-9 to the EPA's Cincinnati Finance Center Region 4 contact, Jessica Henderson (Henderson.Jessica@epa.gov), on or before the date that the Respondent's initial penalty payment is due, pursuant to Paragraph 67 of this CAFO, and the EPA recommends encrypting Form W-9 email correspondence; and
- d. In the event that the Respondent has certified in its completed Form W-9 that it has applied for a TIN and that TIN has not been issued to the Respondent by the date that its initial penalty payment is due, then the Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify the EPA's Cincinnati Finance Center of this fact, via email, by the date that the Respondent's initial penalty payment is due; and
- ii. provide the EPA's Cincinnati Finance Center with the Respondent's TIN, via email, within five days of the Respondent's issuance and receipt of the TIN.

75. Failure to comply with providing Form W-9 or a TIN may subject the Respondent to a penalty. See 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

VIII. EFFECT OF CAFO

76. In accordance with 40 C.F.R. § 22.18(c), the Respondent's full compliance with this CAFO shall only resolve the Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
77. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
78. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
79. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
80. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
81. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
82. The provisions of this CAFO shall apply to and be binding upon the Respondent and its successors and assigns. The Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
83. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate, or legal status relating to the Facility, will not in any way alter the Respondent's obligations and responsibilities under this CAFO.

84. By signing this Consent Agreement, the Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
85. By signing this Consent Agreement, the Complainant and the undersigned representative of the Respondent each certify that one is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party one represents to this CAFO.
86. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
87. By signing this Consent Agreement, the Respondent certifies that to the best of its knowledge the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. The Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
88. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by the Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give the Respondent notice of its intent to revoke, which shall not be effective until received by the Respondent in writing.
89. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
90. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

91. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and the Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement In the Matter of Bakelite Chemicals, LLC, Docket No. RCRA-04-2024-4001(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

	July 25, 2024
_____ Signature	_____ Date
Printed Name: <u>Jean-Paul Aucoin</u>	
Title: <u>President and CEO</u>	
Address: <u>1040 Crown Pointe Parkway, Atlanta GA 30338</u>	

The foregoing Consent Agreement In the Matter of Bakelite Chemicals, LLC, Docket No. RCRA-04-2024-4001(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Araceli B. Chavez, Acting Chief
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Bakelite Chemicals, LLC
200 Ampac Road
Conway, NC 27820

EPA ID No.: NCD980559975,

Respondent.

Docket No. RCRA-04-2024-4001(b)

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

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and the Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, *In the Matter of Bakelite Chemicals, LLC*, Docket No. RCRA-04-2024-4001(b)), were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

Respondent: Trip Van Aman
Quality Manager
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