



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 19 2018

SENT VIA E-MAIL

REPLY TO THE ATTENTION OF:

Mr. Robert J. Schmidt, Jr.
Partner
Porter Wright Morris & Arthur, LLP
41 South High Street, Suite 2900
Columbus, Ohio 43215
rschmidt@porterwright.com

Re: Consent Agreement and Final Order
GFS Chemicals, Inc.
EPA ID Number: OHD004284188
Docket Number: RCRA-05-2019-0005

Dear Mr. Schmidt:

Enclosed, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on 12/19/2018, with the Regional Hearing Clerk (RHC).

The Respondent must pay the civil penalty in the amount of \$15,090 within 30 days of the effective filing date of the CAFO in the manner prescribed in paragraphs 45-50 of the CAFO. All checks must reference the Respondent's site name and the CAFO docket number RCRA-05-2019-0005. Also, the Respondent must undertake and complete a Supplemental Environmental Project in the manner prescribed in paragraphs 51-70 of the CAFO.

Thank you for your cooperation in resolving this matter. If you have any questions regarding this matter, contact Brenda Whitney, of my staff, at 312-353-4796 or at whitney.brenda@epa.gov.

Sincerely,

Julie Morris, Acting Chief
RCRA Branch

Enclosures

cc: Steel Hutchinson, GFS (steel@gfschemicals.com) (w/CAFO)
Mitch Mathews, OEPA (Mitchell.mathews@epa.ohio.gov) (w/CAFO)
David Hohmann, OEPA (David.Hohmann@epa.ohio.gov) (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

GFS Chemicals, Inc.
Columbus, Ohio,

Respondent.



Docket No. RCRA-05-2019-0005

Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is GFS Chemicals, Inc., a corporation doing business in the State of Ohio.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. For purposes of settling this proceeding, Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO, and Respondent neither admits nor denies any of the factual allegation in this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that to the best of its information and belief it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste pursuant to Sections 3001 – 3007, 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA,

42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

15. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009 through November 2, 2015, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by Ohio Administrative Code (OAC) § 3745-50-10(A)(102), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the "owner" or "operator," as those terms are defined under OAC §§ 3745-50-10(A)(96) and 3745-50-10(A)(95), and 40 C.F.R. § 260.10, of a chemical manufacturing facility located at 851 McKinley Avenue, Columbus, Ohio (the Facility).

18. The Facility consists of land and structures, other appurtenances, and improvements on the land where, as part of Respondent's business, hazardous wastes are generated.

19. At all times relevant to this CAFO, Respondent generated "wastes" from its processes at the Facility, as that term is defined by OAC § 3745-50-10(A)(159) and OAC § 3745-51-02, including inorganic metal-bearing wastes, organic wastewaters, and organic chemical wastes.

20. Respondent's processes at the facility produce several hazardous wastes identified or listed in OAC § 3745-51-01 to 3745-51-35, or caused a hazardous waste to become subject to regulation under OAC §§ 3745-50-01 to 3745-270 [40 C.F.R. Parts 260-270].

21. Respondent is a "generator," as that term is defined in OAC § 3745-50-10(45), [40 C.F.R. § 260.10].

22. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2012, prior to the inspection, and thus was a large quantity generator.

23. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Ohio regulations, as part of the applicable state hazardous waste management program for the state of Ohio or both.

24. On December 19, 2012, representatives of U.S. EPA and the Ohio Environmental Protection Agency conducted an inspection of the Facility.

25. At all times relevant to this CAFO, the State of Ohio had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

26. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

Count 1: Storing Hazardous Waste Without a Permit or Interim Status

27. Complainant incorporates paragraphs 1 through 26 of this CAFO as though set forth in this paragraph.

28. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), U.S. EPA promulgated the Hazardous Waste Permit Program Regulations set forth at 40 C.F.R. Part 270 *et seq.*

29. Subject to certain exemptions set forth at 40 C.F.R. § 270.1(c)(2), owners and operators of “hazardous waste management units” must have either: (1) applied for interim status; or (2) applied for and received, a permit to treat, store, or dispose of hazardous waste, without which they are prohibited from treating, storing, or disposing of hazardous waste. *See* OAC §§ 3745-50-41(A) and (D), 3745-50-45(A) and 40 C.F.R. §§ 270.1, 270.71.

30. An exemption to the permit or interim status requirement is the “Generator Exemption” set forth at OAC § 3745-50-45(C)(1), 40 C.F.R. § 270.1(c)(2)(i), under which a generator of hazardous waste who accumulates hazardous waste onsite for less than the time periods provided in 40 C.F.R. Part 262 is exempt from the requirement to obtain a RCRA operating permit or interim status.

31. Pursuant to OAC § 3745-52-34(A) and 40 C.F.R. § 262.34(a), a large quantity generator may accumulate hazardous waste on-site for 90 days or less without having to obtain a permit or interim status provided that it complies with all applicable conditions set forth in OAC § 3745-52-34(A)(1)-(4) and 40 C.F.R. § 262.34(a)(1)-(4).

32. To lawfully store waste for 90 days or less without having to obtain a permit or interim status, OAC § 3745-52-34(A) and 40 C.F.R. § 262.34(a) require *inter alia* that a large quantity generator places the waste in tanks and complies with the applicable requirements of

OAC § 3745-66-90 to 3745-66-101 and 40 C.F.R. § 265.190-265.202, which require *inter alia* that the generator:

- i) Obtain a written assessment reviewed, and certified by a qualified professional engineer attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating hazardous waste. *See* OAC § 3745-66-92(A); 40 C.F.R. § 265.192(a);
- ii) Use an independent, qualified installation inspector or a qualified Professional Engineer to inspect the new tank system or component in use for (1) weld breaks; (2) punctures; (3) scrapes of protective coating; (4) cracks; (5) corrosion; (6) and other structural damage or inadequate construction or installation. *See* OAC § 3745-66-92(B); 40 C.F.R. § 265.192(b);
- iii) Test the new tanks and ancillary equipment (e.g., piping and pumps used to distribute hazardous waste from its point of generation to a storage or treatment tank) for tightness prior to being covered, enclosed, or placed in use. *See* OAC § 3745-66-92(D); 40 C.F.R. § 265.192(d);
- iv) Ensure that ancillary equipment is supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction. *See* OAC § 3745-66-92(E); 40 C.F.R. § 265.192(e);
- v) Obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements in OAC § 3745-66-92(B) – (F) and 40 C.F.R. § 265.192(b) – (f). *See* OAC § 3745-66-92(G); 40 C.F.R. § 265.192(g);
- vi) Provide secondary containment with a leak detection system for the tank systems (including ancillary equipment) that store or treat materials that become hazardous waste. *See* OAC § 3745-66-93; 40 C.F.R. § 265.193; and
- vii) Inspect, at least once per operating day, and document in an operating log, data gathered from leak detection equipment, overflow/spill control equipment, the above-ground portions of the tank system, and the construction materials and the area immediately surrounding the tank system, including the secondary containment system to detect erosion (including cracks and gaps) or signs of releases of hazardous waste. *See* OAC § 3745-52-34(A)(1)(b); OAC § 3745-66-95(A), (B) and (G); 40 C.F.R. § 265.195(a), (b) and (g).

33. On December 19, 2012, Respondent stored hazardous wastes without a permit or interim status in the following tanks at the Facility:

- a. A tank system for removing wastewater from inorganic metal-bearing hazardous wastes generated in Buildings 2 and 4, comprised of: (1) one 75-gallon tank in Building 4; and (2) dedicated ancillary equipment in Buildings 2 and 4; and
- b. Four 5,500-gallon tanks and their associated ancillary equipment for storing organic wastewater generated in the River Street Organics Building.

34. At all times relevant to this Complaint, the 75-gallon tank system and four 5,500-gallon tanks and their associated piping, referenced in Paragraph 33 were "hazardous waste management units" as that term is defined by OAC § 3745-50-10(A)(56) and 40 C.F.R. § 260.10.

35. As a large quantity generator, Respondent could accumulate hazardous waste in the 75-gallon tank system and four 5,500-gallon tanks and their associated ancillary equipment, referenced in Paragraph 33, for 90 days or less without having to obtain a permit or interim status, provided that it complied with all applicable conditions set forth in OAC § 3745-52-34(A)(1)-(4) and 40 C.F.R. § 262.34(a)(1)-(4).

36. On December 19, 2012, Respondent was not complying with the following tank requirements, which are an applicable condition of the "Generator Exemption" set forth in OAC § 3745-52-34(A)(1) and 40 C.F.R. § 262.34(a)(1), for the 75-gallon tank system and four 5,500-gallon tanks referenced in Paragraph 33:

- a. Respondent failed to obtain a written assessment reviewed and certified by a qualified professional engineer attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating hazardous waste [See OAC § 3745-66-92(A); 40 C.F.R. § 265.192(a)];

- b. Respondent failed to use an independent, qualified installation inspector or a qualified Professional Engineer to inspect the new tank system or component in use for (1) weld breaks; (2) punctures; (3) scrapes of protective coating; (4) cracks; (5) corrosion; (6) and other structural damage or inadequate construction or installation [See OAC § 3745-66-92(B); 40 C.F.R. § 265.192(b)];
- c. Respondent failed to test the new tanks and ancillary equipment (e.g., piping and pumps used to distribute hazardous waste from its point of generation to a storage or treatment tank) for tightness prior to being covered, enclosed, or placed in use [See OAC § 3745-66-92(D); 40 C.F.R. § 265.192(d)];
- d. Respondent failed to ensure that ancillary equipment is supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction [See OAC § 3745-66-92(E); 40 C.F.R. § 265.192(e)];
- e. Respondent failed to obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements in OAC § 3745-66-92(B) – (F) and 40 C.F.R. § 265.192(b) – (f) [See OAC § 3745-66-92(G); 40 C.F.R. § 265.192(g)];
- f. Respondent failed to provide secondary containment with a leak detection system for the tank systems (including ancillary equipment) that store or treat materials that become hazardous waste [See OAC § 3745-66-93; 40 C.F.R. § 265.193]; and
- g. Respondent failed to inspect, at least once per operating day, and document in an operating log, data gathered from leak detection equipment, overflow/spill control equipment, the above-ground portions of the tank system, and the construction materials and the area immediately surrounding the tank system, including the secondary containment system to detect erosion (including cracks and gaps) or signs of releases of hazardous waste [See OAC § 3745-66-95(A), (B) and (G); 40 C.F.R. § 265.192(a), (b) and (g)].

37. By storing waste without a permit or interim status on December 19, 2012 in the tanks referenced in Paragraph 33 while not complying with all of the required conditions of the “Generator Exemption” set forth at OAC § 3745-52-34(A)(1)-(4) and 40 C.F.R. § 262.34(a)(1)-(4), Respondent failed to meet the requirements necessary to lawfully store waste without having

to obtain a permit or interim status, and Respondent therefore violated Section 3005 of RCRA, 42 U.S.C. § 6925(a), and the permit requirements of OAC § 3745-50-41(A) and (D) and 40 C.F.R. § 270.1(c).

Count II: Failure to Determine if a Waste is a Hazardous Waste

38. Complainant incorporates paragraphs 1 through 26 of this Complaint as though fully set forth in this paragraph.

39. Pursuant to OAC § 3745-52-11 and 40 C.F.R. § 262.11, a generator of "solid waste," as defined in OAC § 3745-51-10(A)(122) and 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.

40. On December 19, 2012, Respondent was a generator of solid waste, as that term is defined under OAC § 3745-51-10(A)(122) and 40 C.F.R. § 261.2, that it was storing in containers positioned across a drivable path behind the River Street organics manufacturing building, including, but not limited to, fourteen 55-gallon drums and one 275-gallon tote.

41. On December 19, 2012, the containers of solid waste referenced in paragraph 40 were not marked as hazardous or non-hazardous waste.

42. On December 19, 2012, Respondent had not determined if the materials referenced in paragraph 40 were a solid waste.

43. On December 19, 2012, Respondent failed to determine whether solid wastes in the containers referenced in paragraph 40 were hazardous wastes as required by OAC § 3745-52-11 and 40 C.F.R. § 262.11.

44. Respondent violated OAC § 3745-52-11 and 40 C.F.R. § 262.11 by failing to determine whether the solid wastes in the containers referenced in paragraph 40 were hazardous wastes.

Civil Penalty

45. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil cash penalty to settle this action is \$15,090.00. In determining the penalty amount, Complainant took into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

46. Respondent must pay the civil penalty by sending a cashier's check, payable to "Treasurer, United States of America," to:

for checks sent by regular U.S. Postal Service mail

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

for checks sent by express mail

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

The check must state on it *In re GFS Chemicals, Inc.*, and the docket number of this CAFO.

47. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brenda Whitney (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 64 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

51. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing emissions generated from trucking wastewater off-site to a deep-well injection site and reducing the amount of wastewater being stored in tanks at the site.

52. The estimated emissions reduced from this project include 8.8 pounds of NO_x per year, 2.2 pounds of carbon monoxide per year, and 133,980 pounds of carbon dioxide per year.

53. At its chemical manufacturing facility, Respondent must complete the SEP as follows:

- a. No later than 18 months after the effective date of this CAFO, Respondent shall install and operate an air stripper treatment system (ASTS) for wastewater treatment before discarding the waste under license to the local publicly-owned treatment works (POTW).
- b. Respondent shall send to U.S. EPA a Notice of Installation Completion (NIC) once the ASTS is installed and begins operation.
- c. Respondent must spend at least \$40,000 to design, engineer, test, purchase, and install the equipment, and \$19,330 per year to operate the equipment for three years. These costs may include the actual costs of labor plus reasonable indirect costs, provided that the indirect costs do not exceed \$12,500.

54. Respondent must continuously use or operate the equipment installed as the SEP for a minimum of three years following its installation.

55. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this

CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

56. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

57. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA pursuant to this CAFO for five (5) years from the date of the NIC. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

58. Respondent must submit an annual SEP update report to U.S. EPA on or before December 31 of each year for the three years after the date of the NIC. Each annual SEP update report must contain the following information:

- a. Detailed description of the SEP construction and/or operation status;
- b. Description of any operating problems and the actions taken to correct the problems; and,
- c. Itemized costs of goods and services used to implement the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services.

59. Respondent must submit a SEP completion report to U.S. EPA three years after the date of the NIC. The completion report must contain the following information, or clearly reference the information from the two previously submitted update reports:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

60. Respondent must submit the update and completion reports required by this CAFO by first class or overnight mail to Brenda Whitney of the RCRA Branch.

61. With the completion report Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

62. Following receipt of the SEP completion report described in paragraph 59, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report; or
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 64.

63. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does

not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 64, below.

64. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraphs 58 and 59, Respondent must pay a stipulated penalty of \$68,895.00.
- b. If Respondent does not satisfactorily complete the SEP, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 53, Respondent will not be liable for a stipulated penalty under subparagraph a, above.
- c. If Respondent satisfactorily completes the SEP, but spends less than 90 percent of the amount set forth in paragraph 53, Respondent must pay a penalty of \$12,887.00.
- d. If Respondent does not timely submit the SEP update or completion reports, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 through 30 th day
\$500	31 st day and beyond

65. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

66. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 46 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

67. Any public statement that Respondent makes referring to the SEP must include the following language, "GFS Chemicals, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against GFS Chemicals, Inc., for violations of the Resource Conservation and Recovery Act."

68. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

69. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

70. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

71. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: matson.john@epa.gov (for Complainant), and RSchmidt@porterwright.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

72. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

73. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

74. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

75. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA Civil Penalty Policy, and U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

76. The terms of this CAFO bind Respondent, its successors, and assigns.

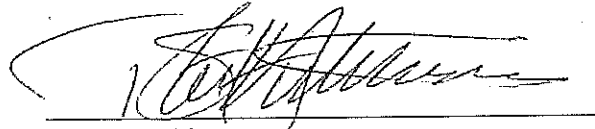
77. Each person signing this agreement certifies that she or he has the authority to sign for the party whom he or she represents and to bind that party to its terms.

78. Each party agrees to bear its own costs and attorney’s fees in this action.

79. This CAFO constitutes the entire agreement between the parties.

GFS Chemicals, Inc., Respondent

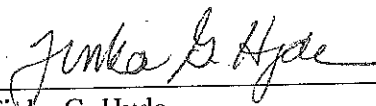
Dec 12, 2018
Date



Steel Hutchinson,
President
GFS Chemicals, Inc.

United States Environmental Protection Agency, Complainant

12-17-18
Date


Tinka G. Hyde
Director
Land and Chemicals Division

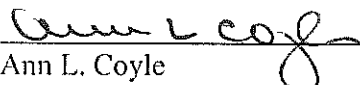
In the Matter of:
GFS Chemicals, Inc.
Docket No. RCRA-05-2019-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12/18/18

Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the Matter of: **GFS Chemicals, Inc.**
RCRA Facility No.: **OHD004284188**
Docket No.: RCRA-05-2019-0005

Certificate of Service

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, Docket Number **RCRA-05-2019-0005**, which was filed on 12/19/2018, in the following manner to the addresses:

Copy by e-mail to
Respondent:
(Authorized in CAFO)

Mr. Robert J. Schmidt, Jr.
rschmidt@porterwright.com
41 South High Street, Suite 2900
Columbus, Ohio 43215

Copy by e-mail to
Attorney for Complainant:

John Matson
matson.john@epa.gov

Copy by e-mail to
Case Assignee:

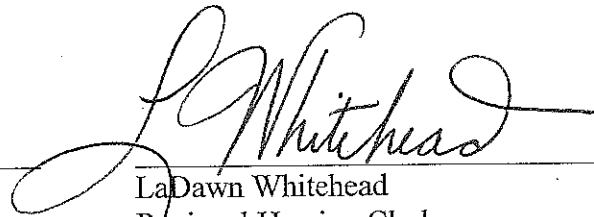
Brenda Whitney
whitney.brenda@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Date

12/19/2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5