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U.S. EPA REGION IX
REGIONAL HEARINGS CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2007- 0004
GKN Aerospace Chem-tronics, Inc.)	
)	CONSENT AGREEMENT AND
EPA ID No. CAD990845513)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
<u>Respondent</u>)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999).
2. The United States Environmental Protection Agency, Region 9 ("EPA") and GKN Aerospace Chem-tronics Inc. ("GKN" or "Respondent"), agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO, which contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.
3. The parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public interest, that it is consistent with the provisions and objectives of RCRA and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.
4. Respondent produces metal parts for rockets and jets by chemical milling at its facility at 1150 West Bradley Avenue, in El Cajon, California (the "Facility"). The Facility comprises nine buildings, over approximately 394,000 square feet. Respondent employs

approximately 850 people at this location. The Facility's EPA ID number is CAD990845513.

5. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) obtain a permit or grant of interim status for storage of hazardous waste, a violation of California Health & Safety Code ("H&SC") Section 25200 and 22 California Code of Regulations ("C.C.R.") § 66270.1(c) and [see also RCRA Section 3005(e) (42 U.S.C. § 6925) and 40 C.F.R. § 270.1(c)]; (2) keep containers of hazardous waste closed during storage, a violation of 22 C.C.R. § 66265.173(a) [see also 40 C.F.R. § 265.173(a)]; (3) store ignitable waste more than fifty feet from property line, a violation of 22 C.C.R. § 66265.176 [see also 40 C.F.R. § 265.176]; and (4) maintain records for recyclable materials utilized for precious metal recovery as required by 40 C.F.R. 266.70(b)(3).¹ These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.²

B. JURISDICTION

6. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health & Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
7. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

¹22 C.C.R. 66261.6(a)(6) states that certain wastes, including silver recovery waste, is subject to regulation under 40 C.F.R. 261.6(a)(2), "Requirements for recyclable materials." That section states that recyclable materials from which precious metals are reclaimed are regulated under 40 C.F.R. Part 266, Subpart F.

² All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (see 57 Fed. Reg. 32726, July 23, 1992) and September 26, 2001 (66 Fed. Reg. 49118, September 26, 2001). Corresponding Federal citations are provided in brackets.

8. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
9. Respondent is a large quantity "generator" of RCRA hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
10. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
11. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [see also 40 C.F.R. §§ 260.10 and 261.2 for definition of "solid waste"].
12. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in H&SC § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [see also RCRA Section 11004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to: filter cake from a waste water treatment unit (F006) and spent solvents from cleaning masking equipment (F003).
13. On November 15, 2005, EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated H&SC § 25100 *et seq.* [see also RCRA Sections 3001, 3002, 3004, and 3005, 42 U.S.C. §§ 6921, 6922, 6924, and 6925] and the regulations adopted pursuant thereto, as approved and authorized by the United States.
14. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
15. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*

17. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to issuing an order under Section 3008 of RCRA in that state. EPA notified the State of California as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
18. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Storage of Hazardous Waste Without a Permit

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. 22 C.C.R. § 66270.1(c) and H&SC § 25200.5 [see also 40 C.F.R. § 270.1(c) and RCRA Section 3005(e), 42 U.S.C. § 6925(e)] require that each person owning or operating a RCRA hazardous waste storage facility to have a permit or grant of interim status. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. § 66270.1(c).
21. 22 C.C.R. § 66262.34(a) provides that large quantity generators of hazardous waste may accumulate hazardous waste onsite for 90 days or less, without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or incorporated by reference in 22 C.C.R. § 66262.34 [see also 40 C.F.R. § 262.34]. Failure to comply with these requirements subjects the generator to the permitting requirements of 22 C.C.R. § 66270.1(c) [see also 40 C.F.R. § 270.1].
22. 22 C.C.R. §§ 66262.34(a) and 66262.34(f) require that generators who accumulate hazardous waste onsite without a permit or grant of interim status shall label containers with the words "hazardous waste" and with the date accumulation of the waste begins [see also 40 C.F.R. § 262.34(a)]. Generators who fail to label containers of hazardous waste accordingly are in violation of 22 C.C.R. § 66262.34(a) and 22 C.C.R. § 66262.34(f), and are subject to the permitting requirements of 22 C.C.R. § 66270.1 [see also 40 C.F.R. § 270.1].
23. During the CEI, the EPA Inspector noted that approximately 17 containers of discarded flammable chemicals were not labeled as hazardous waste, and were not marked with an accumulation start date.

24. During the CEI, EPA Inspectors noted that at one satellite accumulation area, the Building 2 Steam Cleaning Booth, there was a 55-gallon drum of hazardous waste with an unreadable hazardous waste label.
25. During the CEI, EPA Inspectors noted that at another hazardous waste storage area, the wastewater treatment area behind Building 4, there was one 15-cubic yard bin of filter cake (F006 waste) with a label that was not visible for inspection.
26. Respondent's failure to meet the requirements set forth or referenced by 22 C.C.R. § 66262.34 subject it to the permit requirements of 22 C.C.R. § 66270.1 [see also 40 C.F.R. §§ 262.34, 270.1]. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66270.1(c) [see also 40 C.F.R. § 270.1(c)].

COUNT II

Failure to Close Containers of Hazardous Waste

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 22 C.C.R. § 66262.34(e) require that generators comply with the requirements of 22 C.C.R. § 66265.173(a) [see also 40 C.F.R. § 262.34(c) and 265.173]. 22 C.C.R. § 66265.173(a) requires that containers holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.
29. On October 21, 2004, the EPA Inspectors noted that approximately 19 containers located in satellite accumulation areas were open at a time when waste was not being added or removed.
30. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.173 [see also 40 C.F.R. § 265.173].

COUNT III

Storage of Ignitable Wastes Less Than 50 Feet From the Property Line

31. Paragraphs 1 through 30 above are incorporated herein by this reference as if they were set forth here in their entirety.
32. 22 C.C.R. § 66265.176 [see also 40 C.F.R. § 265.176] provides that containers holding ignitable or reactive waste must be located at least 50 feet from a facility's property line.
33. During the CEI, EPA Inspectors observed that there was a flammable chemicals storage cabinet on the ground less than 10 feet from the fence demarcating the facility property line. The cabinet contained approximately 17 containers of ignitable hazardous waste.

34. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 265.176.

COUNT IV

Failure to Maintain Silver Recovery Records

35. Paragraphs 1 through 34 above are incorporated herein by this reference as if they were set forth here in their entirety.
36. At the Facility Respondent generates silver waste (D011) that is recycled for silver recovery.
37. 22 C.C.R. 66261.6(a)(6) states that certain wastes, including silver recovery waste, is subject to regulation under 40 C.F.R. 261.6(a)(2), "Requirements for recyclable materials." That section states that recyclable materials from which precious metals are reclaimed are regulated under 40 C.F.R. Part 266, Subpart F, including 40 C.F.R. § 266.70.
38. 40 C.F.R. § 266.70(c) states that persons who generate recyclable materials that are regulated under Subpart F must keep the following records to document that they are not accumulating these materials speculatively: (1) records showing the volume of these materials stored at the beginning of the calendar year; (2) the amount of these materials generated or received during the calendar year; and (3) the amount of materials remaining at the end of the calendar year.
39. During the CEI, the EPA Inspectors noted that Respondent did not have any records indicating the amount of silver and silver-coated film present at the beginning of the year, generated throughout the year, and remaining at the end of the year.
40. Therefore, EPA alleges that Respondent violated 22 C.C.R. 66261.6(a)(6) [see also 40 C.F.R. § 261.6(a)(2)].

D. CIVIL PENALTY

41. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, see 61 Fed. Reg. 69360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to THIRTY TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring on March 15, 2004 or thereafter. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the June 2003 RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed a total of ELEVEN THOUSAND NINE HUNDRED DOLLARS

(\$11,900.00) as the civil penalty for all of the violations alleged herein. Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

42. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
43. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

44. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G and any delays in performance and/or stipulated penalties have been resolved. Conclusion of those matters shall constitute full settlement of the violations alleged herein.
45. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
46. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of operation of the Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.
47. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

48. Respondent consents to the assessment of and agrees to pay a civil penalty of ELEVEN THOUSAND NINE HUNDRED DOLLARS (\$11,900.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
49. Respondent shall submit payment of the ELEVEN THOUSAND NINE HUNDRED DOLLAR (\$11,900.00) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk. Payments shall be made by certified or cashier's check payable to the U.S. Environmental Protection Agency and sent to:

Mellon Bank
U.S. Environmental Protection Agency - Region 9
P.O. Box 371099M
Pittsburgh, PA 15251.

At the time each payment is so made, a copy of the check shall be sent to:

Danielle Carr
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Jim Polek (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105.

50. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

51. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: for failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and FIFTEEN HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
52. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
53. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
54. All penalties shall be made payable by certified or cashier's check to the U.S. Environmental Protection Agency and shall be remitted to:

Mellon Bank
U.S. Environmental Protection Agency - Region 9
P.O. Box 371099M
Pittsburgh, PA 15251.

55. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this action. At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Danielle Carr
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Jim Polek (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX

75 Hawthorne Street
San Francisco, CA 94105.

- 56. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
- 57. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

- 58. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other statutory, regulatory or common law enforcement authority of the United States.
- 59. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
- 60. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
- 61. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

- 62. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any

hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

63. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
64. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
65. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

11/1/06

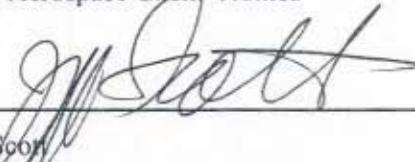
Date

12/6/06

Date



Name, Title: Andrew Yao, COO
GKN Aerospace Chem-Tronics



Jeff Scott
Director, Waste Management Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO") (U.S. EPA Docket No. RCRA RCRA-9-2007-0004) be entered and that GKN Aerospace Chem-Tronics, Inc. pay a civil penalty of ELEVEN THOUSAND NINE HUNDRED DOLLARS (\$11,900.00) by certified or cashier's check made out to U.S. Environmental Protection Agency, and sent to Mellon Bank, P.O. Box 371099M, Pittsburgh, PA, 15251, within thirty (30) days after the Effective Date of this CA/FO. A copy of the check shall be sent to the EPA Region 9 addresses specified in Section G of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective immediately.

12/11/06

Date


JoAnn Asami
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Julian Medina
Manager of Environmental Affairs
GKN Aerospace Chem-tronics, Inc.
1150 West Bradley Avenue
El Cajon, CA 92020

Dec. 12, 2006
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX