

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

PMC Organometallix, Inc.,
2316 Highland Avenue
Carrolton, Kentucky 41008
EPA ID No.: KYD006373922

Respondent.

Docket No. RCRA-04-2023-2104(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 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. Respondent is PMC Organometallix, Inc. (Respondent), a corporation doing business in the Commonwealth of Kentucky. Respondent is incorporated and organized under the laws of Delaware. This proceeding pertains to Respondent's facility located at 2316 Highland Avenue, Carrolton, Kentucky 41008 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (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 at Kentucky Revised Statutes (KRS) Subchapter 224.46 and Title 401 of the Kentucky Administrative Regulations (KAR), Chapter 39.
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)(2) of RCRA, 42 U.S.C. § 6928(a)(2). 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. KRS 224.46-510(1) [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 401 KAR 39:080, Section 1 [40 C.F.R. Part 262].
12. Pursuant to 401 KAR 39:060, Section 3(1) [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.
13. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.4(b)].
14. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
15. Pursuant to 401 KAR 39:060, Section 3(1) [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.

16. Pursuant to 401 KAR 39:060, Section 3(1) [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.
17. Pursuant to 401 KAR 39:060, Section 3(1) [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. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for benzene is identified with the EPA Hazardous Waste Number D018.
18. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed hazardous waste if it is listed in 401 KAR 39:060, Section 3(1) [40 C.F.R. Part 261, Subpart D].
19. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.31].
20. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.30 and 261.31], the following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures, are listed hazardous waste and identified with the EPA Hazardous Waste Number F001.
21. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.30 and 261.31], the following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures, are listed hazardous waste and identified with the EPA Hazardous Waste Number F003.
22. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.30 and 261.31], the following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures, are listed hazardous waste and identified with the EPA Hazardous Waste Number F005.
23. Pursuant to 401 KAR 39:005, Section 1(33) [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 401 KAR 39:060, Section 3(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.

24. Pursuant to 401 KAR 39:005, Section 1(28) [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.
25. Pursuant to 401 KAR 39:005, Section 1(53) [40 C.F.R. § 260.10], a “person” includes a corporation.
26. Pursuant to 401 KAR 39:005, Section 1(51) [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility.
27. Pursuant to 401 KAR 39:005, Section 1(50) [40 C.F.R. § 260.10], an “operator” is the person responsible for the overall operation of a facility.
28. Pursuant to 401 KAR 39:005, Section 1(68) [40 C.F.R. § 260.10], “storage” means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.
29. Pursuant to 401 KAR 39:005, Section 1(71), and KRS 224.1-010(29) [Section 1004(34) of RCRA, 42 U.S.C. § 6903(34)], “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or process designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.
30. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a “tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
31. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a “tank system” is defined as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
32. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a “large quantity generator” (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2200 pounds) of non-acute hazardous waste in a calendar month.
33. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.11], a person who generates a solid waste as defined in 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste.
34. Pursuant to 401 KAR 39:080, Section 1(1) [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 the 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 KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.16(b) or § 262.17(a)], except as required by 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.15(a)(7) and (8)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.15(a)] (hereinafter referred to as the “SAA Permit Exemption”).

35. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.15(a)(4)], which is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed at all times during accumulation, except when adding, removing, or consolidating waste; or when temporary venting of a container is necessary for the proper operation of equipment, or to prevent dangerous situations, such as build-up of extreme pressure.
36. Pursuant to 401 KAR 39:080, Section 1(1) [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: (i) with the words “Hazardous Waste,” and (ii) with an indication of the hazards of the contents.
37. Pursuant to 401 KAR 39:080, Section 1(1) [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 KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17] (hereinafter referred to as the “LQG Permit Exemption”).
38. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(ii)], which is a condition of the LQG Permit Exemption, if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the LQG Permit Exemption.
39. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(iv)(A)], which is a condition of the LQG Permit Exemption, a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.
40. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], which incorporates 401 KAR 39:090, Section 2(1) [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 inspections at least once each operating day of the following: (i) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (ii) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (iii) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).
41. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(5)(i) and (ii)], which is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks or containers must mark or label the tank or containers with the words “Hazardous Waste;” with an indication of the hazards of the contents; and with the date upon which each period of accumulation begins clearly visible for inspection on each container.
42. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(6)], which incorporates 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.255], and is a condition of the LQG Permit Exemption, a generator is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

43. Pursuant to 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
44. Pursuant to 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.14(a)], a SQHUW must label or mark each universal waste battery or container or tank in which the batteries are contained clearly with one of the following phrases: “Universal Waste – Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
45. Pursuant to 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.15(a) and (c)], a SQHUW may accumulate universal waste for no longer than one year and must be able to demonstrate the length of time that the universal waste has accumulated from the date that it became a waste or was received.
46. Pursuant to KRS 224.46-520(1) and 401 KAR 39:060, Section 5(1) [Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.30(a)], the owner and/or operator of a facility which treats, stores, or disposes of hazardous waste must comply with all conditions of a hazardous waste management permit.
47. KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets 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 401 KAR 39:090, Section 1 (permitted) and 401 KAR 39:090, Section 2 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
48. On March 1, 2021, Respondent was issued a Hazardous Waste Management Facility Permit, Permit # KYD006373922, by the Kentucky Department for Environmental Protection (KYDEP) for incineration, storage, and treatment of hazardous waste (hereinafter, the “RCRA Permit”). The RCRA Permit became effective on March 31, 2021, and its expiration date is March 31, 2031.
49. Pursuant to the RCRA Permit, Part I, “The Permittee shall inform the Cabinet of any deviation from, or changes in the information in the [RCRA Permit] Application, which would affect the Permittee’s ability to comply with the applicable regulations or Permit Conditions. 40 CFR PART 270.30.” Pursuant to page D-8 of the approved RCRA Permit Application, which is incorporated into Part VIII of the RCRA Permit: “A computer database program is used for the tracking of waste generation, storage, and disposal. The location where the container is stored is assigned by scanning the waste label and selecting a location. The container is scanned when shipped for disposal or charged for incineration so that its termination is recorded. The database maintains the inventory of the waste containers and amount of waste stored in permitted areas.” Respondent’s electronic system used to track the movement of hazardous waste containers across the Facility was included in the Permit Application and became part of the Permit which became effective on March 31, 2021.
50. Pursuant to RCRA Permit Condition III.F.1, “The Permittee shall comply with all requirements set forth under 40 C.F.R. § 264.73. The Permittee shall maintain records of all hazardous wastes stored and treated at the facility in accordance with the recordkeeping procedures set forth in 40 C.F.R. § 264.73.” Such records must include: “a description and the quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage, and/or disposal at the facility,” “the

location of each hazardous waste within the facility and the quantity,” and “cross-references to specific manifest document numbers, etc.”

51. Pursuant to RCRA Permit Condition III.L.7, “The Permittee shall manage the secondary containment systems for the tank systems in accordance with ... 40 C.F.R. Part 264.193” and “shall maintain an impervious coating which is free of cracks, gaps, or other deterioration on all containment system surfaces which may be exposed to hazardous wastes or hazardous constituents (or releases of hazardous constituents).”
52. Pursuant to RCRA Permit Condition III.K.5, “The Permittee shall comply with all requirements set forth under 40 C.F.R. § 264.171, to ensure that all hazardous waste containers are in good condition” and “if a container holding hazardous waste is not in good condition (e.g. severe rusting, apparent structural defects) or if it begins to leak, the Permittee shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of this Permit. [40 C.F.R. Part 264 - Subpart I]”
53. Pursuant to RCRA Permit Condition III.K.7, “The Permittee shall keep all containers closed during storage, except when it is necessary to add or remove waste, and shall not open, handle, or store containers in a manner which may rupture the container or cause it to leak” and shall otherwise comply with the requirements set forth under 40 C.F.R. § 264.173 relating to container management.

IV. FINDINGS OF FACTS

54. Respondent is a batch manufacturer of both organic and inorganic tin compounds and a permitted hazardous waste treatment and storage facility.
55. On September 14 and 15, 2021, the EPA and KYDEP conducted a RCRA compliance evaluation inspection (CEI) at Respondent’s Facility. The EPA’s findings of the CEI were documented in a report electronically mailed to Respondent, dated November 10, 2021.
56. At the time of the inspection, Respondent had notified as a LQG of hazardous waste and a permitted hazardous waste treatment and storage facility.
57. Respondent accumulates less than 5,000 kilograms of universal waste at any time and is therefore a SQHUW.
58. At the time of the CEI, the EPA inspectors observed that Respondent had failed to conduct a hazardous waste determination on the following four waste streams generated at the Facility:
 - (a) Five 1-gallon containers of waste paint stored in Laboratory Area B-12;
 - (b) A 55-gallon container labeled “solvent contaminated lab wipes and TRS PPE (F003-flammable solids)” which contained liquids in the Central Accumulation Area (CAA) outside of the Laboratory;
 - (c) A 5-gallon container of waste solids beside the Hydropulper; and
 - (d) Discarded Tyvek in the solid waste dumpster near the Hydropulper.
59. At the time of the CEI, the inspectors observed an open 5-gallon hazardous waste container storing waste aerosol cans (D001) in the SAA near the Hydropulper. This container was not marked with the

words “Hazardous Waste,” and was also not marked with an indication of the hazards of the contents.

60. At the time of the CEI, the inspectors observed a 55-gallon hazardous waste accumulation container (D001/D002/waste flammable liquid corrosive) that did not appear to be in good condition, with a rusted lid, in the Area B-12 CAA outside the Laboratory.
61. At the time of the CEI, the inspectors observed a 55-gallon hazardous waste accumulation container of solvent-contaminated wipes and Tin Recovery System (TRS) personal protective equipment (PPE) that was not closed due to an improperly working drum lid in the Area B-12 CAA outside the Laboratory.
62. At the time of the CEI, a review of daily inspection logs revealed that Respondent failed to conduct daily inspections of the TK-1709 CAA Tank storing waste benzene (D018) on July 27, 2021, and July 28, 2021, and failed to include the date, time, and inspector’s name on documentation of the inspections conducted on August 30, 2021, and March 28, 2021. Additionally, during the CEI, the inspectors observed multiple areas of deterioration on the TK-1709 CAA Tank that were not included on inspection logs.
63. At the time of the CEI, the inspectors observed a 55-gallon hazardous waste accumulation container of Methyl Tin in the Area B-12 CAA that was not labeled with the words “Hazardous Waste,” and was also not marked with an indication of the hazards of the contents of the container. Otherwise, this container was dated September 11, 2021.
64. At the time of the CEI, the inspectors observed that Respondent failed to maintain aisle space in the Building 39 (BD039) CAA.
65. At the time of the CEI, the inspectors observed four book-sized lead acid batteries outside of the locked Building 25 (BD025) universal waste storage room that were not labeled with one of the following phrases: “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).” In addition, Respondent produced no documentation to demonstrate the length of time that the waste had been accumulating.
66. At the time of the CEI, the inspectors noted that Respondent failed to inform KYDEP that the computer database program required by the RCRA Permit for the tracking of waste generation, storage, and disposal, had not been operational for more than one year.
67. At the time of the CEI, a review of the available records revealed that Respondent failed to maintain electronic records for tracking the movement of all hazardous wastes at the Facility as part of its operating records, because the computer database program that maintains these records, had not been operational for over one year.
68. At the time of the CEI, the inspectors observed multiple cracks in the secondary containment near hazardous waste Tank TK-5210.
69. At the time of the CEI, the inspectors observed two 55-gallon drums of hazardous waste being stored on Permitted Container Storage Pad B-65, section 9S20, that were not in good condition, with bulging lids that were rusting. Additionally, the inspectors observed an open hazardous waste accumulation container with expelled waste accumulating on the partially closed bunghole.

V. ALLEGED VIOLATIONS

70. Respondent is a “person” as defined in 401 KAR 39:005, Section 1(53) [40 C.F.R. § 260.10].
71. Respondent is the “owner” and “operator” of a “facility” located in Carrollton, Kentucky as those terms are defined in 401 KAR 39:005, Section 1(51), (50), and (28) [40 C.F.R. § 260.10].
72. Respondent is a “generator” of “hazardous wastes” as those terms are defined in 401 KAR 39:005, Section 1(33) [40 C.F.R. § 260.10] and 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3].
73. Respondent has a “tank” as defined in 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10].
74. Respondent has a “tank system” as defined in 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10].
75. Respondent is a SQHUW as defined in 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.9].
76. Respondent generates, treats, and stores wastes that are “solid wastes” and “hazardous wastes” as defined in 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.2 and 3].
77. Respondent failed to make a proper hazardous waste determination on five 1-gallon containers of waste paint in the Laboratory Area B-12, a 55-gallon container of solvent contaminated wipes and TRS PPE in the CAA outside the Laboratory, a 5-gallon container of waste solids beside the Hydropulper, and discarded Tyvek in the solid waste dumpster near the Hydropulper. The EPA therefore alleges that Respondent violated 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid waste generated at its Facility.
78. Respondent failed to keep a 5-gallon container of hazardous waste aerosol cans (D001) in the SAA near the Hydropulper closed at all times during accumulation. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to keep its containers of hazardous waste closed in accordance with 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.15(a)(4)], which is a condition of the SAA Permit Exemption.
79. Respondent failed to mark or label a 5-gallon hazardous waste container of aerosol cans (D001) in the SAA near the Hydropulper with the words “Hazardous Waste” and an indication of the hazards of the contents. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the marking and labeling requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.15(a)(5)], which is a condition of the SAA Permit Exemption.
80. Respondent failed to transfer hazardous waste (D001/D002/waste flammable liquid corrosive) from a 55-gallon container in poor condition in the Area B-12 CAA outside the Laboratory, to a container in good condition. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the container management requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(ii)], which is a condition of the LQG Permit Exemption.

81. Respondent failed to keep a 55-gallon container of solvent-contaminated wipes and TRS PPE in the Area B-12 CAA outside of Laboratory closed. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the container management requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(iv)(A)], which is a condition of the LQG Permit Exemption
82. Respondent failed to conduct two daily inspections of the TK-1709 CAA tank storing hazardous waste benzene (D018) on July 27, 2021, and July 28, 2021, and failed to include the date, time, and inspector's name on documentation of the inspections conducted on August 30, 2021, and March 28, 2021. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the tank inspection requirements of 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)].
83. Respondent failed to mark or label a 55-gallon hazardous waste container of Methyl Tin in the Area B-12 CAA with an indication of the hazards of the contents. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to comply with the marking and labeling requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(5)(i)], which is a condition of the LQG Permit Exemption.
84. Respondent failed to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of Facility operation in an emergency in the BD039 CAA. The EPA therefore alleges that Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(6)], by not complying with the aisle space requirements in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.255].
85. Respondent failed to properly label four book-sized lead acid batteries outside of the BD025 universal waste storage room. The EPA therefore alleges that Respondent violated 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.14(a)], by failing to label or mark each universal waste battery or container or tank in which the batteries are contained clearly with one of the following phrases: "Universal Waste - Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."
86. Respondent failed to document the length of time that the lead acid batteries discussed in the preceding paragraph were accumulated from the date that they became a waste. The EPA therefore alleges that Respondent violated 401 KAR 39:080, Section 3(1) [40 C.F.R. § 273.15(a) and (c)], by failing to demonstrate the length of time that the Facility's universal waste had been accumulated from the date the universal waste became a waste or was received.
87. Respondent failed to inform KYDEP that the computer database program required by the RCRA Permit for the tracking of waste generation, storage, and disposal movement, had not been operational for more than one year. The EPA therefore alleges that Respondent violated Part I of the RCRA Permit and 401 KAR 39:060, Section 5(1) [40 C.F.R. § 270.30] by failing to inform the Cabinet of any deviation from, or changes in the information in the approved RCRA Permit Application.

88. Respondent failed to maintain electronic records for tracking the movement of all hazardous wastes at the Facility for more than one year. The EPA therefore alleges that Respondent violated RCRA Permit Condition III.F.1 and 401 KAR 39:090, Section 1 [40 C.F.R. § 264.73]] by failing to properly track hazardous waste movements at the Facility with electronic records.
89. Respondent failed to maintain the secondary containment near tank TK-5210 which contains slurry to feed into the TRS. The EPA therefore alleges that Respondent violated RCRA Permit Condition III.L.7 and 401 KAR 39:090, Section 1 [40 C.F.R. 264.193] by failing to “maintain an impervious coating which is free of all cracks, gaps, or other deterioration on all containment system surfaces which may be exposed to hazardous wastes or hazardous constituents (or releases of hazardous constituents).”
90. Respondent failed to transfer waste from two hazardous waste containers in poor condition to a container in good condition on Permitted Storage Pad B-65, section 9S20. The EPA therefore alleges that Respondent violated RCRA Permit Condition III.K.5 and 401 KAR 39:090, Section 1 [40 C.F.R. § 264.171] by failing to ensure all hazardous waste containers are in good condition.
91. Respondent failed to keep a hazardous waste accumulation container on Permitted Storage Pad B-65, section 9S20 closed except when it is necessary to add or remove waste. The EPA therefore alleges that Respondent violated RCRA Permit Condition III.K.7 and 401 KAR 39:090, Section 1 [40 C.F.R. § 264.173(a)] by failing to keep all containers closed in permitted storage areas.

VI. STIPULATIONS

92. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
93. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), 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. consents to any stated Permit Action in this CAFO;
 - f. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - g. waives its rights to appeal the Final Order accompanying this CAFO.
94. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering 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 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 this 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.

95. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.

96. 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

97. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **SIX HUNDRED EIGHTY-NINE THOUSAND NINE HUNDRED DOLLARS (\$689,900.00)**, which is to be paid within 30 days of the Effective Date of this CAFO.

98. Payment 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 Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

- c. If paying by EFT, 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, New York 10045
Beneficiary: Environmental Protection Agency

- d. If paying by ACH, 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, Maryland 20737
Remittance Express (REX): 1-866-234-5681

99. Respondent shall send proof of payment electronically, 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
Environmental Compliance and Assurance Division
U.S. EPA Region 4
Newman.Alan@epa.gov

100. “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-04-2023-2104(b).
101. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if 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 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 or a stipulated penalty more than 90 days past due, 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).
- c. Monthly Handling Charge. 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 costs 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.

102. In addition to what is stated in the prior Paragraph, if 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 Respondent's licenses or other privileges, or suspend or disqualify 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.

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

VIII. EFFECT OF CAFO

104. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
105. 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).
106. 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).
107. Nothing in this CAFO shall relieve 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.
108. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
109. 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.
110. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
111. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
112. By signing this Consent Agreement, 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.
113. By signing this Consent Agreement, the Complainant and the undersigned representative of 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.
114. 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.

115. By signing this Consent Agreement, Respondent certifies that 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. 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.
116. 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 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 Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
117. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
118. 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

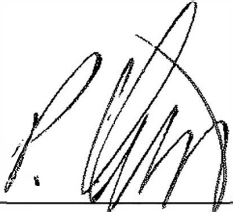
119. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement, In the Matter of **PMC Organometallix, Inc.**, Docket No. RCRA-04-2023-2104(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date 9/15/2023
Printed Name: P. G. WEISS
Title: EVP AND GENERAL COUNSEL
Address: 1288 RTE 73, MOUNT LAUREL, NJ 08054

The foregoing Consent Agreement, In the Matter of **PMC Organometallics, Inc.**, Docket No. RCRA-04-2023-2104(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

PMC Organometallics, Inc.,
2316 Highland Avenue
Carrollton, Kentucky 41008
EPA ID No.: KYD006373922

Respondent.

Docket No. RCRA-04-2023-2104(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 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.

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.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **PMC Organometallix, Inc.**, Docket No. RCRA-04-2023-2104(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:

To Respondent: Margaret Anne Hill, Esq.
BlankRome
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Margaret.Hill@blankrome.com

Laura Robinson
HES Manager
PMC Organometallix, Inc.
2316 Highland Ave
Carrolton, Kentucky 41008
Laura.robinson@pmc-group.com

To EPA: Alan Newman
Environmental Engineer
Newman.Alan@epa.gov

Roberto X. Busó
Associate Regional Counsel
Buso.Roberto@epa.gov

Quantindra Smith
Environmental Protection Specialist
Smith.Quantindra@epa.gov

Shannon L. Richardson, Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov