



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

AUG 02 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Andrew J. Nitiss
EHS & Quality Manager
PennAKem LLC
3324 Chelsea Avenue
Memphis, Tennessee 38108

SUBJECT: Consent Agreement and Final Order
PennAkem LLC
Docket No. CAA-04-2010-1532(b)

Dear Mr. Nitiss:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2010-1532(b)) involving PennAkem LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on today's date.

As required by the CAFO, within thirty days of receipt of this letter, a cashier's check or certified check in the amount of \$4,463, made out to the "Treasurer, United States of America," should be submitted to one of the following addresses:

For payment sent via U.S. Postal Service
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson @ 314-418-4087

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

The Docket No. should be included on the check. Also, a separate copy of the check and a written statement that payment has been made in accordance with this CAFO should be sent to the following individuals:

Saundi Wilson
U. S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303, and

Victor L. Weeks
U. S. EPA Region 4
EPCRA Enforcement Section
61 Forsyth Street
Atlanta, Georgia 30303.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Victor Weeks at (404) 562-9189.

Sincerely,



Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
PennAkem LLC)
)
Respondent)
_____)

Docket Number: CAA-04-2010-1532(6)

2010 AUG -2 PM 3:59
HEARINGS CLERK
2010 JUN 30 PM 3:42
HEARINGS CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is PennAkem LLC (hereinafter, "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent does business in the State of Tennessee.

5. Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated thereunder.

6. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 3324 Chelsea Avenue, Memphis, Tennessee 38108.

7. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA is authorized to promulgate regulations for accidental release prevention.

8. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

9. The Respondent, at its stationary source identified in Paragraph 6 of this CAFO, has one RMProgram covered process which stores or otherwise uses furan in quantities exceeding the applicable RMProgram threshold (5,000 pounds).

10. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has 5,000 pounds or more of furan dioxide in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to EPA.

11. Respondent has submitted and registered an RMPlan to EPA for the stationary source identified in Paragraph 6 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 6 of this CAFO.

12. Based on an RMProgram compliance monitoring inspection conducted on August 28, 2008, EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement a provision of 40 CFR Part 68 when it:

Failed to update and revalidate its process hazard analysis (PHA) at least every five years after the completion of the initial PHA to assure that its PHA is consistent with the current process as required by 40 CFR § 68.67(f); and

Failed to review, update and submit its Risk Management Plan (RMPlan) to EPA at least every five years as required by 40 CFR § 68.190(b)(1). The Respondent's RMPlan was due for its five year review update and resubmission on or before June 18, 2009. As of March 3, 2010, the Respondent had not updated and resubmitted its RMPlan.

III. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

14. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

15. Respondent consents to the assessment of and agrees to pay the civil penalty, and to complete the Supplemental Environmental Project (SEP) as set forth in this CAFO.

16. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge, it is compliant with the applicable requirements of Section 112(r) of the CAA.

17. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

18. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the RMProgram.

IV. Final Order

19. Respondent agrees to pay a civil penalty of FOUR THOUSAND, FOUR HUNDRED AND SIXTY-THREE DOLLARS (\$4,463). Payment is to be paid within thirty (30) days of the effective date of this CAFO.

20. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," to one of the following addresses:

For payment sent via U.S. Postal Service
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson @ 314-418-4087

The check shall reference on its face the name and the Docket Number of the CAFO.

21. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Victor L. Weeks
EPCRA Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

22. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Also, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP. Any attempt by Respondent to deduct any such penalty payment or SEP expenditure shall constitute a violation of this CAFO.

23. On or before March 31, 2011, Respondent shall complete the following pollution reduction SEP:

The Respondent shall install an engineered, sensor/alarm actuated, sprinkler/delude system that protects furan feed tanks D27 and D28.

24. Respondent shall spend a minimum of EIGHTEEN THOUSAND Dollars (\$18,000) to complete the above referenced SEP.

25. On or before May 1, 2011, Respondent shall submit the following documentation to Victor Weeks at the address given in Paragraph 21 of the CAFO:

- a. An affidavit from an appropriate representative of Respondent, which shall state whether and when the project was completed;
- b. Documentation of the expenses for the SEP including, but not limited to, invoices and canceled checks; and
- c. Upon request, Respondent shall immediately send EPA any additional documentation concerning implementation of the SEP.

26. Respondent certifies that, as of the effective date of this CAFO, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

27. Any public statement, oral or written, by Respondent making any reference to any part of the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 112(r) of the Clean Air Act."

28. If Respondent fails to timely and fully complete any part of the SEP, including the failure to spend the minimum amount of EIGHTEEN THOUSAND Dollars (\$18,000) for the SEP, Respondent shall pay to the United States a stipulated penalty in the amount of THIRTEEN THOUSAND, THREE HUNDRED AND EIGHTY-SEVEN Dollars (\$13,387).

For the purposes of this paragraph, determining whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

29. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge up to six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

31. This CAFO shall be binding upon the Respondent, its successors, and assigns.

32. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
61 Forsyth Street
Atlanta, GA 30303
(404) 562-8451

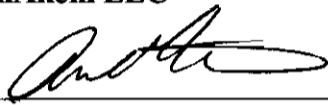
33. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

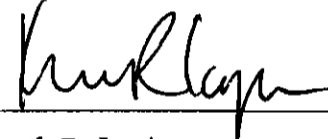
34. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

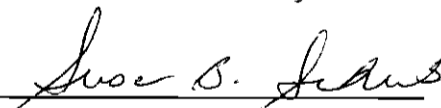
PennAkem LLC

By:  Date: 6.29.10
Name: Andrew J. N. Hiss (Typed or Printed)
Title: EHS & Quality Mgr. (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 6/16/2010
Kenneth R. Lapierre
Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 29th day of July, 2010.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of PennAkem LLC, CAA-04-2010-1532(b), on the parties listed below in the manner indicated:

Caron B. Falconer
U. S. EPA - Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

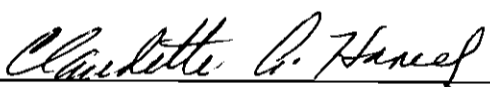
Ellen Rouch
U. S. EPA - Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Andrew J. Nitiss
EHS & Quality Manager
Penn A Kem, LLC
3324 Chelsea Avenue
Memphis, Tennessee 38108

(Via Certified Mail -
Return Receipt Requested)

Date: August 2, 2010



for Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303
404-562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 7/26/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: PennArkem
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4463
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2010 1532(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Officer: _____

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

- 2. Originating Office (EAD)
- 3. Designated Program Office

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
- 2. Regional Hearing Clerk

- 3. Designated Program Office
- 4. Regional Council (EAD)