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Region IX  
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

In the Matter of: )  
 ) Docket No. EPCRA-09-2012- 0007  
Kemet Blue Powder Corporation )  
 ) **CONSENT AGREEMENT AND FINAL**  
Respondent. ) **ORDER PURSUANT TO 40 C.F.R.**  
 ) **§§ 22.13 and 22.18**

**I. CONSENT AGREEMENT**

Complainant, the Director of the Communities and Ecosystem Division, United States Environmental Protection Agency, Region IX ("EPA"), and Kemet Blue Powder Corporation ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

**A. AUTHORITY AND PARTIES**

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter "EPCRA"), the regulation promulgated thereunder at 40 C.F.R. Part 372, and

the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, for violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.

2. Complainant is the Director, Communities and Ecosystems Division, EPA Region IX. The Administrator of the United States Environmental Protection Agency has delegated the authority to file this action and to sign a consent agreement settling this action under EPCRA to the Regional Administrator Region IX by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX has further delegated this authority to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

3. Respondent is a Nevada corporation with a facility located at 16 Bruce Way, Mound House, Nevada.

#### **B. APPLICABLE STATUTES AND REGULATIONS**

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

5. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in North American Industrial Classification System (NAICS) 331 sector code 331 – Primary Metal Manufacturing; and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities exceeding the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

6. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1<sup>st</sup> of each year, a Toxic Chemical Release Inventory reporting form (hereinafter “**Form R**”) for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

7. Section 325(c) of EPCRA and 40 C.F.R. Part 19 authorizes EPA to assess a penalty of up to \$37,500 for each violation of Section 313 of EPCRA that occurred after January 12, 2009.

### C. ALLEGATIONS

8. Respondent is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7). At all times relevant to this matter, Respondent was an owner and operator of a “facility,” as that term is defined at 40 C.F.R. § 372.3, pursuant to Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), which is located at 16 Bruce Way, Mound House, Nevada (hereinafter the “**Facility**”). At all times relevant to this matter, the Facility had 10 or more “full-time employees,” as that term is defined at 40 C.F.R. § 372.3, and total corporate entity sales of over 10 million dollars.

9. The Facility is classified in NAICS Code 331419 which falls under the general category of NAICS Code 331 - Primary Metal Manufacturing.

10. During the calendar year 2009, Respondent manufactured approximately 40,000 pounds of **nitrate compounds** (water dissociable; reportable only when in aqueous solution) and otherwise used approximately 40,000 pounds of **nitric acid**, which are listed under 40 C.F.R. §

372.65. Respondent manufactured **nitrate compounds** in amounts over the threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a). Respondent otherwise used nitric acid in amounts over the threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(a).

11. Respondent failed to submit timely Form Rs for nitric acid and nitrate compounds to the EPA Administrator and the State of Nevada on or before July 1, 2010 for the calendar year 2009, as required by 40 C.F.R. § 372.22, pursuant to Subsection 313(b) of EPCRA. Each of Respondent's failure to submit timely Form Rs for nitric acid and nitrate compounds that Respondent processed at the Facility during the calendar year 2009 constitutes a violation of 40 C.F.R. Part 372, pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023.

#### **D. RESPONDENT'S ADMISSIONS**

12. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.F of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### **E. RESPONDENT'S CERTIFICATION**

13. In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA all of the required toxic chemical release inventory reporting forms in compliance with Section 313 of EPCRA and the regulations promulgated thereunder; and (2) it has complied with all other EPCRA requirements at all facilities under its control.

## F. CIVIL ADMINISTRATIVE PENALTY

14. In order to resolve this matter without further litigation, Respondent agrees to the assessment of a penalty in the amount of **FORTY TWO THOUSAND DOLLARS (\$42,000)** as final settlement of the civil claims against Respondent arising under Section 313 of EPCRA as alleged in Section I.C of this CAFO.

Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

### Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

### Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

### ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter "sfol.1" in the search field  
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Russell Frazer  
Toxics Release Inventory Program (CED-4)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Margaret Alkon  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

15. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

16. In the event that Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 14 by the deadline specified in Paragraph 15, Respondent shall pay to EPA the stipulated penalty in the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that the civil penalty is late, which shall become due and payable upon EPA's written request. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 15 may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable to 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. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's license or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil

administrative penalty by the deadline specified in Paragraph 15. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### **G. RETENTION OF RIGHTS**

17. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

18. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

**H. ATTORNEYS' FEES AND COSTS**

19. Except as specified in Paragraph 16, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

**I. EFFECTIVE DATE**

20. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

**J. BINDING EFFECT**

21. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

22. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, KEMET BLUE POWDER CORPORATION:

8-28-2012  
DATE

Name:

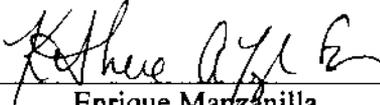
Title:

Marc Runyah

Jr. Operations Manager

FOR COMPLAINANT, EPA REGION IX:

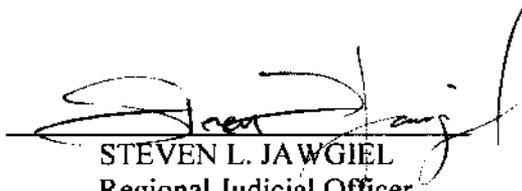
9/13/2012  
DATE

  
Enrique Marzanilla  
Director  
Communities and Ecosystems Division  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION IX

**II. FINAL ORDER**

IT IS HEREBY ORDERED that this CAFO (Docket No.EPCRA-09-2012-0007) be entered, and that Respondent shall pay a civil administrative penalty in the amount of **FORTY TWO THOUSAND DOLLARS (\$42,000)** and comply with the terms and conditions set forth in the Consent Agreement. This CAFO shall become effective upon filing.

09/25/12  
DATE

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region IX

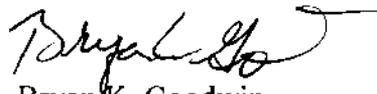
**CERTIFICATE OF SERVICE**

I certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number EPCRA-09-2012-0007 , was filed on 9/26/12 , with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Marc Runyan  
Senior Operations Manager  
Kemet Blue Powder Corporation  
16 Bruce Way  
Mound House, Nevada 89706  
Certified Return Receipt Article No: 7011 1570 0002 9580 8318

Dated: \_\_\_\_\_

9/26/12



Bryan K. Goodwin  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

Certified Mail No. 7011 1570 0002 9580 8318  
Return Receipt Requested

SEP 14 2012

Re: EPCRA-09-2012- 0007

Marc Runyan  
Senior Operations Manager  
**Kemet Blue Powder Corporation**  
16 Bruce Way  
Mound House, NV 89706

Dear Mr. Runyan:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, which contains the terms of the settlement reached with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Russ Frazer at (415) 947-4220 or have your attorney contact Margaret Alkon at (415) 972-3890.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director  
Communities and Ecosystems Division

Enclosure