

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2019 JUN 17 PM 2: 26

IN THE MATTER OF:)	
)	
Arkema Inc.)	Docket No. RCRA-07-2019-0191
)	
Respondent)	
)	
Proceeding under Sections 3008(a) and (g))	
of the Resource Conservation and)	
Recovery Act as amended,)	
42 U.S.C. § 6928(a) and (g))	
)	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Arkema Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C § 6925, Rev. Stat. Mo. 260.390, and the regulations promulgated thereunder.

Parties

3. Complainant is the Acting Director of the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated from the Regional Administrator and Administrator of EPA.

4. Respondent is Arkema Inc., a Pennsylvania corporation authorized to operate under the laws of Missouri.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3005 of RCRA, 42 U.S.C. § 6925, Rev. Stat. Mo. 260.390.1(1), and the Missouri Code of State Regulations (C.S.R.) at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

8. Section 1004(15) of RCRA, 7 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

9. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

10. “Solid waste” is defined at 40 C.F.R § 261.2.

11. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

12. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month. A generator who generates 1,000 kilograms or more of non-acute hazardous waste or greater than 1 kilogram of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e) in a calendar month is commonly referred to as a Large Quantity Generator (LQG).

13. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Missouri has adopted by reference the federal regulations cited herein at pertinent parts in Title 10, Division 25 of the C.S.R. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

14. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$99,681 for violations that occur after November 2, 2015, and are assessed after January 15, 2019. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

15. Respondent is a business and authorized to conduct business within the State of Missouri. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent’s facility is located at 901 East 16th Avenue, North Kansas City, Missouri 64116 (Facility). At the Facility, Respondent manufactures powder coating resin and employs approximately 25 full-time employees.

17. In the Respondent’s 2013 Biennial Waste Generator Report, Respondent notified EPA that Respondent’s Facility is an LQG of D001, D002, D003, D004, D008, and D035 characteristic hazardous wastes and F001, F003, and F005 listed hazardous wastes pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

18. Respondent has been assigned the following EPA ID Number for the Facility: MOR000539817.

19. On or about January 27-28, 2016, and May 21-23, 2018, EPA inspectors conducted RCRA Compliance Evaluation Inspections (hereinafter, respectfully, “the 2016 inspection” and “the 2018 inspection”) of the hazardous waste management practices at the Facility. Based on a review of the inspection reports and the information provided during the

inspections by Facility personnel, EPA determined that Respondent was operating, at the time of the inspections, as an LQG.

20. At the time of the 2016 inspection, the following solid and hazardous wastes, among others, were present: reaction water waste (D001 and D002) contained in one less than 90 day hazardous waste accumulation tank (Reaction Water Tank).

21. At the time of the 2018 inspection, the following solid and hazardous wastes, among others, were present: reactor water waste (D001 and D002) contained in the Reaction Water Tank.

22. The Reaction Water Tank is a tank system for storing hazardous waste under 40 C.F.R. § 265.190 and a fixed roof tank under 40 C.F.R. § 265.1081.

Violations

23. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

24. Complainant hereby incorporates the allegations above, as if fully set forth herein.

25. Section 3005 of RCRA, 42 U.S.C. § 6925, Rev. Stat. Mo. 260.390.1(1), and the Missouri regulations at 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

26. At the time of the 2016 and 2018 inspections, Respondent did not have a permit or interim status to treat, store, or dispose of hazardous waste at the Facility.

27. State of Missouri's regulations at 10 C.S.R. 25-5.262 incorporate 40 C.F.R. § 262.34(a) by reference and state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. The Facility is considered an LQG of hazardous waste. If an LQG fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at their facility for any length of time. As described in Paragraphs 28 through 47, below, Respondent failed to comply with the following conditions at the Facility.

Generator Requirements

Failure to properly document daily hazardous waste accumulation tank inspections to confirm inspections were conducted

28. The Missouri regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(a)(1)(ii) by reference and requires that the generator comply with the applicable requirements of Subpart J of 40 C.F.R. Part 265.

29. Pursuant to 40 C.F.R. § 265.195(a) and (g), as found in 40 C.F.R. Part 265, Subpart J, the owner or operator must (i) inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment to ensure that the tank system is being operated according to its design and (ii) document in the operating record of the facility the inspection of the tank system.

30. The 2016 inspection revealed that Respondent failed to properly document such daily inspections of the Reaction Water Tank on 40 days between December 20, 2014, and January 22, 2016 to confirm that such daily inspections were conducted.

Failure to have a tank containment system free of cracks or gaps

31. The Missouri regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(a)(1)(ii) by reference and requires that the generator comply with the applicable requirements of Subpart J of 40 C.F.R. Part 265.

32. Pursuant to 40 C.F.R. § 265.193(e)(1)(iii), as found in 40 C.F.R. Part 265 Subpart J, the owner or operator must provide a secondary containment system for hazardous waste accumulation tanks free of gaps and cracks.

33. The 2016 inspection revealed that the secondary containment system for the Reaction Water Tank had cracks and gaps.

Failure to either have secondary containment for ancillary equipment or satisfy the criteria for an exemption from such requirement under 40 C.F.R. § 265.193(f)(1)-(4)

34. The Missouri regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(a)(1)(ii) by reference and requires that the generator comply with the applicable requirements of Subpart J of 40 C.F.R. Part 265.

35. Pursuant to 40 C.F.R. § 265.193(f), as found in 40 C.F.R. Part 265 Subpart J, the owner or operator must ensure that equipment ancillary to hazardous waste accumulation tanks are provided with full secondary containment meeting the requirements of 40 C.F.R. § 265.193(b) and (c), unless the criteria in 40 C.F.R. § 265.193(f)(1)-(4) are met.

36. During the 2016 inspection, it was determined that Respondent failed to provide a full secondary containment system for portions of the equipment ancillary to the Reaction Waste Tank and failed to provide evidence that the tank system ancillary equipment meets the exemption criteria in 40 C.F.R. § 265.193(f)(1)-(4).

Failure to timely remove liquid from secondary containment

37. The Missouri regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(a)(1)(ii) by reference and requires that the generator comply with the applicable requirements of Subpart J of 40 C.F.R. Part 265.

38. Pursuant to 40 C.F.R. § 265.193(c)(4), as found in 40 C.F.R. Part 265 Subpart J, the owner or operator must ensure for secondary containment systems for hazardous waste accumulation tanks that spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

39. During the 2016 inspection, standing liquid was observed in the containment sump for the Reaction Water Tank. Although Respondent asserted that it had pumped out all standing liquids in the containment area until the pump lost prime, EPA determined that some standing liquid had been present for longer than 24 hours and that removal of such liquid could have been done within 24 hours.

40. During the 2018 inspection, standing liquid was observed in the containment sump for the Reaction Water Tank and partially covering the floor of the secondary containment. Although Respondent asserted that it had pumped out all standing liquids in the containment area until the pump lost prime, EPA determined that some standing liquid had been present for longer than 24 hours and that removal of such liquid could have been done within 24 hours.

Failure to sufficiently document annual fixed roof tank inspections

41. The Missouri regulation at 10 C.S.R. 25-5.262(1) incorporates 40 C.F.R. § 262.34(a)(1)(ii) by reference and requires that the generator comply with the applicable requirements of Subpart CC of 40 C.F.R. Part 265.

42. Pursuant to 40 C.F.R. § 265.1090(b), as found in 40 C.F.R. Part 265 Subpart CC, the owner or operator of a tank using air emission controls in accordance with the requirements of § 265.1085 of this subpart shall prepare and maintain records for the tank that include a record for each inspection required under 40 C.F.R. § 265.1085. Pursuant to 40 C.F.R. § 265.1085(b)(4), the owner or operator must inspect fixed roof tanks initially and then at least every year and must document the inspections in accordance with 40 C.F.R. § 265.1090.

43. The 2018 EPA inspection revealed that Respondent conducted the required annual inspections of the Reaction Water Tank but failed to sufficiently document the

inspections in accordance with the specific documentation requirements of 40 C.F.R. § 265.1090(b).

44. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 28 through 43 above, Respondent was not authorized to store hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and Rev. Stat. Mo. 260.390.

CONSENT AGREEMENT

45. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

46. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

47. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

48. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

49. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twenty-One Thousand One Hundred Fifty-Nine Dollars (\$21,159).

50. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

51. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Britt Bieri, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

52. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

53. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

54. Within forty-five (45) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the following documentation to EPA, in accordance with Paragraph 57, below:

- a. Documentation of the daily tank inspections of the Reaction Water Tank, conducted pursuant to 40 C.F.R. Part 265, Subparts J, for the thirty (30) days immediately following the Effective Date of this Consent Agreement and Final Order;
- b. Documentation of the 2018 annual fixed roof inspection of the Reaction Water Tank, conducted pursuant to 40 C.F.R. Part 265, Subpart CC; and
- c. A document describing how the secondary containment system for the Reaction Water Tank and ancillary equipment are being inspected daily and how all spills or accumulated precipitation are being removed within 24 hours.

55. On or before January 15, 2020, Respondent shall submit the following documentation to EPA, in accordance with Paragraph 57, below:

Documentation of the 2019 annual fixed roof tank inspection of the Reaction Water Tank, conducted pursuant to 40 C.F.R. Part 265, Subpart CC.

56. On or before June 15, 2020, Respondent shall submit the following documentation to EPA, in accordance with Paragraph 57, below:

Documentation of the daily tank inspections of the Reaction Water Tank, conducted pursuant to 40 C.F.R. Part 265, Subpart J, for the month of May 2020.

57. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph to the following address:

Ed Buckner, ECAD/CB/RCRA
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

58. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

59. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

60. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA at the Facility.

61. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

62. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty Thousand Thirty Nine Dollars (\$60,039) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

63. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), 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 Respondent's facility.

64. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

65. Nothing contained in the Final Order portion of this Consent Agreement and Final

Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

66. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

67. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

68. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

69. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

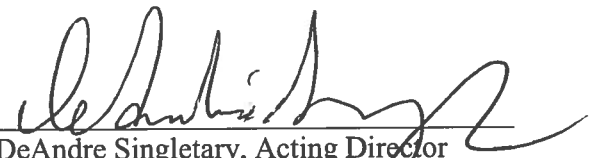
70. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

71. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.


COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

6-12-19
Date


DeAndre Singletary, Acting Director
Enforcement and Compliance Assistance Division

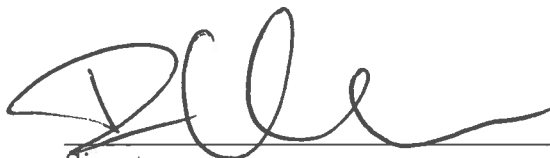
6/12/19
Date


Britt Bieri
Office of Regional Counsel

RESPONDENT:

Arkema Inc.

June 11 2019
Date


Signature

BRIAN VALLEU
Printed Name

NORTH AMERICA ACR MANUFACTURING DIRECTOR
Title

FINAL ORDER

Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

June 17, 2019
Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy delivered to Attorney for Complainant:

Britt Bieri (e-copy)

Copy delivered to Respondent via certified mail:

Shawn Torrez, Operations Manager
Arkema Inc.
901 East 16th Avenue
North Kansas City, Missouri 64116

Copy delivered to Attorney for Respondent:


Matt Morrison (e-copy)

Copy delivered to the State of Missouri:

John Jurgensmeyer, Director (e-copy)
Hazardous Waste Program
Missouri Department of Natural Resources

Nicole Eby, Unit Chief (e-copy)
Hazardous Waste Enforcement
Department of Natural Resources

17 Jun 2019
Date


Lisa Haugen
Regional Hearing Clerk