



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 13 2011

Chris S. Leason
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225

SUBJ: Agrium U.S., Inc., Hartsville, South Carolina Facility
Consent Agreement and Final Order, Docket No. RCRA-04-2011-4015(b)

Dear Chris,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CAFO) resolving the violations of the Resource Conservation and Recovery Act alleged by EPA against Agrium, U.S., Inc.'s Hartsville, South Carolina, facility (Agrium). Please note that payment of Agrium's penalty is due within thirty days of the effective date of the CAFO, and the timing of Agrium's other obligations pursuant to the CAFO begins on the effective date of the CAFO. The effective date of the CAFO is the date the CAFO is filed with the Regional Hearing Clerk

Thank you for your assistance in getting this matter resolved. If you have any questions, please call me at (404) 562-9544.

Sincerely,

A handwritten signature in cursive script that reads "Joan".

Joan Redleaf Durbin
Senior Attorney
US EPA, Region 4

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Agrium U.S. Inc.
201 Society Avenue
Hartsville, South Carolina 29550

EPA ID Number: SCD 003 350 675

Respondent

Docket Number: RCRA-04-2011-4015(b)

Proceeding under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

RECEIVED
EPA REGION IV
2011 SEP 13 PM 2:24
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Sections 44-56-10 and 48-1-100 of the 1976 South Carolina Code of Laws et seq. (LEXIS 2006) (Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921 et seq.), and the South Carolina Hazardous Waste Management Regulations (SCHWMR) promulgated pursuant thereto and set forth at R.61-79.260 – R.61-79.270 (Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of §§ 48-1-100 and 44-56-30 of the South Carolina Code of Laws (Section 3005 of RCRA, 42 U.S.C. § 6925) and SCHWMR 61-79.260 – R.61-79.270 (40 C.F.R. Parts 260-270).
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (the EPA). Respondent is Agrium U.S. Inc. (Respondent), a corporation incorporated under the laws of the State of Colorado. Respondent operates a facility at 201 Society Avenue, Hartsville, South Carolina (facility).

III. PRELIMINARY STATEMENTS

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the South Carolina Department of Health and Environmental Control (SCDHEC) received authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found at Sections 44-56-10 et seq. and 48-1-100 et seq. of the South Carolina Code of Laws, and SCHWMR 61-79.260 – R.61-79.270.
6. Although the EPA has granted the State of South Carolina authority to enforce its own hazardous waste program, 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 of South Carolina.
7. As the authorized provisions of South Carolina's hazardous waste program operate in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized South Carolina program, however, for ease of reference, the federal citations will follow in parentheses.
8. 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 of South Carolina before issuance of this CAFO.
9. Section 44-56-30 of the South Carolina Code of Laws (Section 3002 of RCRA, 42 U.S.C. § 6922), require the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in SCHWMR 61-79.262 (40 C.F.R. Part 262).
10. Section 44-56-60 of the South Carolina Code of Laws (Section 3005 of RCRA, 42 U.S.C. § 6925), set 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 SCHWMR 61-79.264-265 (40 C.F.R. Parts 264 and 265).
11. Pursuant to SCHWMR 61-79.261.2 (40 C.F.R. § 261.2), a "solid waste" is any discarded material that is not otherwise excluded by regulation.
12. Pursuant to SCHWMR 61-79.261.3 (40 C.F.R. § 261.3), a solid waste is a "hazardous waste" if it is not otherwise excluded from regulation as a hazardous waste and it meets the criteria set forth in SCHWMR 61-79.261.3 (40 C.F.R. § 261.3).
13. Pursuant to SCHWMR 61-79.261.3 (40 C.F.R. § 261.3), a solid waste is a listed "hazardous waste" if it is listed in SCHWMR 61-79.261 Subpart D (40 C.F.R. Part 261, Subpart D).
14. Pursuant to SCHWMR 61-79.261.31 (40 C.F.R. § 261.31), wastewater treatment sludges from electroplating operations, with certain exceptions, are listed hazardous waste F006 (40 C.F.R. § 261.31).
15. Pursuant to SCHWMR 61-79.261.20 (40 C.F.R. § 261.20), a solid waste that exhibits any of the characteristics in SCHWMR 61-79.261.21 – 24 (40 C.F.R. § 261.21 – 24) is a characteristic hazardous waste.

16. Pursuant to SCHWMR 61-79.261.24(a) (40 C.F.R. § 261.24(a)), a solid waste exhibits the characteristic of toxicity if, when using the TCLP and the required test methods, the extract from the waste contains any of the contaminants listed in Table 1 of SCHWMR 61-79.261.24 (40 C.F.R. § 261.24) at the concentration equal to or greater than the respective value given in that table.
17. Pursuant to SCHWMR 61-79.261.24(b) (40 C.F.R. § 261.24(b)), a solid waste that exhibits the characteristic of toxicity for cadmium is a D006 hazardous waste.
18. SCHWMR 61-79.261.4(a)(20) (40 C.F.R. § 261.4(a)(20)) establishes the conditions to exclude zinc-bearing hazardous secondary materials from the definition of solid waste when such secondary materials are used to make zinc fertilizers (Zinc Fertilizer Exclusion).
19. Among the requirements for the Zinc Fertilizer Exclusion from the definition of solid waste, SCHWMR 61-79.261.4(a)(20)(ii)(A) (40 C.F.R. § 261.4(a)(20)(ii)(A)) requires generators and intermediate handlers of zinc-bearing hazardous secondary materials to submit a one-time notice to the SCDHEC which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).
20. In order to maintain the Zinc Fertilizer Exclusion, manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must meet the following conditions:
 - a. Submit a onetime notification to the SCDHEC pursuant to SCHWMR 61-79.261.4(a)(20)(iii)(B) (40 C.F.R. § 261.4(a)(20)(iii)(B));
 - b. Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials pursuant to SCHWMR 61-79.261.4(a)(20)(iii)(C) (40 C.F.R. § 261.4(a)(20)(iii)(C)); and
 - c. Submit to the SCDHEC an annual report as required in SCHWMR 61-79.261.4(a)(20)(iii)(D) (40 C.F.R. § 261.4(a)(20)(iii)(D)).

IV. EPA ALLEGATIONS AND DETERMINATIONS

21. Respondent is a "person" as defined in Section 48-1-10 of the 1976 South Carolina Code of Laws (Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)), and SCHWMR 61-79.260.10 (40 C.F.R. § 260.10).
22. Respondent is the "owner/operator" of a "facility" located in Hartsville, South Carolina, as those terms are defined in SCHWMR 61-79.260.10 (40 C.F.R. § 260.10).
23. In 1980, the former owner of the facility, Royster Clark, submitted a Part A Hazardous Waste Permit Application to operate a hazardous waste storage unit.
24. In 1988, Royster Clark submitted the Part B of its RCRA Permit application.

25. In 1990, before the RCRA storage permit was issued, SCDHEC approved a clean closure certification for the hazardous waste storage unit.
26. In August 2000, Royster Clark submitted a revised Notification of RCRA Subtitle C Activity indicating that the facility was a conditionally exempt small quantity generator of hazardous wastes.
27. In March 2006, Respondent acquired the facility from Royster Clark.
28. At the facility, Respondent manufactured different types of fertilizers, including fertilizers that contained zinc oxide.
29. TNT General Contracting, Inc. (TNT), is a Missouri corporation that conducts business at Rural Route 3 Box 83, Kahoka, Clark County, Missouri, and that stores and mixes various zinc bearing materials for Webb Minerals, LLC.
30. Webb Minerals, LLC (Webb), located at 1261 Maine Street, Quincy, Illinois, is a limited liability company formed under the laws of Illinois.
31. Webb owns all the zinc bearing materials delivered to TNT and the resulting mixtures. Webb sells the processed zinc bearing ingredients to commercial fertilizer manufacturers to be added as a zinc nutrient to complete fertilizer product mixtures. Some of the zinc bearing materials originates from metal plating and galvanizing operations. The material from metal plating and galvanizing operations often meets the definition of hazardous waste.
32. On March 24, 2010, Missouri Department of Natural Resources (MDNR) inspectors conducted a Compliance Evaluation Inspection of the hazardous waste management practices at the Webb/TNT facility in Missouri.
33. At the time of the inspection, Webb/TNT had several "supersacks" that were labeled as containing F006, which is the EPA hazardous waste code for electroplating wastewater treatment sludge.
34. The Zinc Fertilizer Exclusion is inapplicable in Missouri because the state has not sought EPA authorization for the rule. Moreover, EPA Region 7 and MDNR determined that TNT and Webb failed to satisfy the following conditions and therefore do not qualify for the Zinc Fertilizer Exclusion:
 - a. TNT and Webb failed to ensure that zinc bearing materials were not accumulated speculatively.
 - b. TNT and Webb failed to submit notice to EPA or MDNR that they would be handling zinc-bearing materials to be incorporated into zinc fertilizers. Moreover, neither one of them notified MDNR of the location of the Missouri facility nor applied for a RCRA EPA Identification Number for the Missouri facility.
 - c. TNT and Webb failed to store the zinc bearing materials in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases into the environment.

- d. TNT and Webb failed to provide written notice to receiving facilities that the material is subject to the conditions of 40 C.F.R. § 261.4(a)(20).
 - e. TNT and Webb failed to maintain minimum required records.
35. On several occasions in 2010, Respondent purchased zinc oxide from Webb/TNT.
36. In a letter dated November 10, 2010, South Holland Metal Finishing Company, Inc., Monee, Illinois (South Holland) informed EPA Region 7 that, since 2007, it has sent its electroplating wastewater treatment sludge to Webb/TNT in Kahoka, Missouri.
37. In a letter dated January 27, 2011, Respondent provided the following information to EPA:
- a. A material classification form provided to Agrium by Webb that identified the zinc oxide purchased by Agrium (hereinafter referred to as "Webb Zinc Oxide") as virgin material.
 - b. The facility was storing approximately 10 tons of Webb Zinc Oxide in supersacks in its main fertilizer production building at the Hartsville facility.
 - c. Toxicity characteristic leaching procedure (TCLP) results indicating that a single grab sample from one of the Webb Zinc Oxide supersacks contained cadmium at a concentration of 6.8 milligrams per liter (mg/L).
 - d. In addition to the Webb Zinc Oxide, Respondent indicated that it was storing approximately 11,000 tons of fertilizer produced using Webb Zinc Oxide at the facility and at another Agrium facility in Florence, Alabama.
38. In several documents provided to EPA Region 7, Webb/TNT stated that the Webb Zinc Oxide sold to Agrium includes an ingredient referred to as "Dreck."
39. On February 14, 2011, a fire destroyed the facility's main building where production operations were conducted.
40. On February 15 and 16, 2011, EPA conducted a RCRA compliance evaluation inspection (CEI) at the facility, and made the following observations:
- a. A fire had destroyed the main fertilizer production building, adjoining storage areas, and the truck loading area.
 - b. The approximately 10 tons of Webb Zinc Oxide that Respondent had been storing in supersacks in the main fertilizer production building had not been moved from that location during fire response activities; however, the fire had destroyed the supersacks.
 - c. Respondent indicated that before the fire, all bulk finished fertilizer and intermediates were stored in bins that were divided with wooden partitions.
 - d. The fire destroyed the wooden partitions, and the different fertilizer grades were commingled during fire fighting activities, creating a single large pile of damaged bulk fertilizer.

- e. In the northern portion of the facility, Respondent had several stacks of different blends of bagged fertilizers, some of which contained Webb Zinc Oxide.
 - f. Respondent was accumulating the fire fighting water and rain water in frac tanks.
 - g. The fire generated large amounts fertilizer-contaminated fire debris.
41. During the CEI, Respondent indicated that the damaged bulk fertilizer pile and three of the bagged fertilizer blends ("6-3-18 Yam," "18-64-24-RB TOB" and "14-4-14 RB") at the facility contained Webb Zinc Oxide.
 42. On February 16, 2011, EPA sampled the Webb Zinc Oxide piles, 6-3-18 Yam fertilizer, 18-64-24-RB TOB fertilizer, 14-4-14 RB fertilizer, and the damaged bulk fertilizer pile.
 43. All the samples EPA collected on February 16, 2011 contained total cyanide, at concentrations between 0.20 and 1.4 parts per million.
 44. On February 17, 2011, Webb informed EPA Region 7 that the "Dreck" contains the electroplating wastewater treatment sludge received from South Holland.
 45. In a letter dated June 23, 2011, Respondent provided EPA with a characterization plan for the non-damaged bulk and bagged fertilizers produced from Webb Zinc Oxide (hereinafter "Fertilizer Products").
 46. Pursuant to SCHWMR 61-79.261.31(a)(2) (40 C.F.R. § 261.31(a)(2)), South Holland electroplating wastewater treatment sludge is an F006 listed hazardous waste.
 47. Pursuant to SCHWMR 61-79.261.2 (40 C.F.R. § 261.2), Respondent's Webb Zinc Oxide is a solid waste.
 48. On at least one occasion, one grab sample from one supersack of the Webb Zinc Oxide stored at the facility exhibited the characteristic of toxicity for cadmium, and this supersack of Webb Zinc Oxide is therefore D006 hazardous waste pursuant to SCHWMR 61-79.261.24(b) (40 C.F.R. § 261.24(b)).
 49. Pursuant to SCHWMR 61-79.261.31(a)(2)(iv) (40 C.F.R. § 261.3(a)(2)(iv)), the Webb Zinc Oxide is a listed F006 hazardous waste.
 50. Pursuant to SCHWMR 61-79.261.31(a)(2)(iv) (40 C.F.R. § 261.3(a)(2)(iv)), (a) the bulk fertilizer at Hartsville, which is composed of all un-bagged fertilizers made with Webb Zinc Oxide (added to damaged bulk fertilizer pile after EPA's February 2011 sampling event) and intermediates; and (b) fire-damaged Webb Zinc Oxide currently maintained in roll-off containers on the eastern side of the property are listed F006 hazardous waste.
 51. All fertilizers at the facility that were manufactured using Webb Zinc Oxide and that are designated as recyclable by Agrium are regulated as recyclable materials under SCHWMR 61-79.266.20 (40 C.F.R. § 266.20).

52. The water that is stored in the frac tanks (fire fighting water and storm water) is contaminated with F006 hazardous waste.
53. The fire debris is contaminated with F006 hazardous waste.
54. Pursuant to Section 44-56-60 of the South Carolina Code of Laws (Section 3005 of RCRA, 42 U.S.C. § 6928), the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. By accepting hazardous waste from Webb and storing the Webb Zinc Oxide without a permit, Respondent was in violation of Section 44-56-60 of the South Carolina Code of Laws (Section 3005 of RCRA, 42 U.S.C. § 6928).

V. INJUNCTIVE RELIEF

Based on the foregoing, the Parties agree on the entry of this Consent Agreement on the following terms:

55. Within 7 calendar days of the effective date of this CAFO, Respondent shall manage the Webb Zinc Oxide in compliance with all applicable regulations in SCHWMR 61-79.262 (40 C.F.R. Part 262).
56. Within one hundred and twenty (120) calendar days of the effective date of this CAFO, Respondent shall complete the removal and shipment of the damaged bulk fertilizer at the facility to an authorized RCRA Subtitle C facility.
57. Within forty five (45) calendar days of the effective date of this CAFO, Respondent shall complete the removal and shipment of the Webb Zinc Oxide to an authorized RCRA Subtitle C facility.
58. Within 7 calendar days after completing the tasks set forth in paragraph 55- 57 above, Respondent shall submit to EPA a certification signed by a responsible corporate representative stating that all Webb Zinc Oxide and bulk fertilizer have been properly removed from the facility. This certification shall be sent to Larry L. Lamberth at the address in paragraph 63 below. The certification shall be as follows:

I certify under penalty of law that, to the best of my knowledge and belief, the tasks identified in paragraphs 55-57 of the Consent Agreement, Docket No. RCRA-04-2011-4015(b), have been completed. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the tasks. This certification is based on my inquiry of the person or persons who performed the tasks, or those persons directly responsible for the person or persons who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Fire Debris larger than 60 mm- RCRA Requirements

59. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall submit a Fire Debris Management Plan to EPA that meets the standards of SCHWMR 61-79.261.3(f) (40 C.F.R. §261.3(f)) for the fire debris that is greater than 60 mm (2.36 inches) (e.g. wood and concrete) at

the facility. The Plan must contain Fire Debris disposal options based on the results of the hazardous waste determination made through SCHWMR 61-79.261.3(f) (40 C.F.R. § 261.3(f)).

Fire Debris less than 60 mm - RCRA Requirements

60. Within ninety (90) calendar days of the effective date of this CAFO, Respondent shall complete the removal and shipment of the fire debris that is smaller than 60 mm (2.36 inches) to an authorized RCRA Subtitle C facility. This debris includes ash, soil, and non-combustible materials.

Fire Fighting/Rain Water in Frac Tanks- RCRA Requirements

61. Within fourteen (14) calendar days of the effective date of this CAFO, Respondent shall manage the Fire Fighting/Rain Water in compliance with all applicable regulations of SCHWMR 61-79.262 (40 C.F.R. Part 262).

Non-Damaged Fertilizer Product Produced with Webb Zinc Oxide

62. Within thirty (30) calendar days of the effective date of this CAFO, Respondent will submit to EPA:
 - a. A characterization report from its June 23, 2011 characterization plan for its non-damaged Fertilizer Product produced from Webb Zinc Oxide. At a minimum, the characterization report must identify each Fertilizer Product that was analyzed, the concentration of cadmium, chromium, cyanide, lead, nickel, and silver compared to the UTS standards in SCHWMR 61-79.268.48 (40 C.F.R. § 268.48), and the analytical data sheets; and
 - b. A proposal for the handling of the Fertilizer Product that does not comply with the UTS for cadmium, chromium, cyanide, lead, nickel and silver. At a minimum, this proposal must include Respondent's plan to either (i) dispose of this Fertilizer Product in compliance with all applicable regulations of SCHWMR 61-79.262 (40 C.F.R. Part 262) or (ii) reprocess this Fertilizer Product in accordance with the requirements of SCHWMR 61-79.266.20 (40 C.F.R. § 266.20). If Respondent chooses to reprocess the Fertilizer Product, the disposition plan must include a schedule for reprocessing and a sampling protocol to demonstrate compliance with the UTS for cadmium, chromium, cyanide, lead, nickel and silver in SCHWMR 61-79.268.48 (40 C.F.R. § 268.48). For purposes of this Order only, the Fertilizer Product need not be transported as a hazardous waste, but must be received and reprocessed at a pre-designated Agrium-owned processing facility.

Community Engagement

63. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall submit a Community Engagement Plan (CEP). The CEP will be used to inform and update the community/public regarding the contemplated disposition of the materials identified herein. The CEP should include all invited residents from the neighborhoods surrounding the facility. Respondent is the lead for this community engagement effort, but will invite EPA and SCDHEC to all meetings and work with both agencies on any information to be distributed, etc.

64. Respondent shall submit all required plans and proposals and any other notices required pursuant to this CAFO to addressees:

Larry L. Lamberth, Chief
South ROECB Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

And

Cheryl Coleman, Director
BLWM/Compliance and Enforcement
SCDHEC
2600 Bull Street
Columbia, SC 29201
colemact@dhec.sc.gov

Buck W. Graham, Jr., CPM, Director
SCDHEC - EQC Region 4
145 E. Cheves Street
Florence, SC 29506
grahambw@dhec.sc.gov

65. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
66. Respondent neither admits nor denies the above factual allegations, determinations, and conclusions of law set forth herein.
67. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
68. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on the Paperwork Reduction Act.
69. Respondent waives any right 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.
70. 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 RCRA. The parties agree that compliance with the terms of this CAFO shall resolve all of Respondent's liability for civil penalties for the violations and facts alleged and stipulated to in this CAFO.
71. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

72. Respondent consents to the payment of a civil penalty in the amount of \$300,000 within thirty (30) calendar days of the effective date of this CAFO.
73. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearhouse (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 docket number and facility name shall be referenced on the face of the check. If Respondent utilizes the US Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent utilizes non-US Postal express mail delivery, the payment shall be sent to:

United States Bank
Government Lockbox 979077
United States Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, the 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
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank, ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
United States Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White, (301) 887-6548

74. Respondent shall submit a copy of the payment to the following addressees:

Belinda Johnson, Acting Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

And to:

Javier Garcia
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

75. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required 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. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate.
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which may accrue under subparagraphs (a) and (b).

76. Penalties paid pursuant to this CAFO are not tax deductible under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

77. This CAFO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

78. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
79. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

80. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the 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 or the environment.
81. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.
82. Except as expressly provided herein, nothing in this CAFO constitutes a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating to, the storage, transportation, release, or disposal of hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
83. This CAFO may be amended only by written agreement between EPA and Respondent.

IX. OTHER APPLICABLE LAWS

84. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

X. SERVICE OF DOCUMENTS

85. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter:

Joan Redleaf Durbin
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

86. A copy of any documents that Complainant files in this action shall be sent to the following attorney who represents Respondent in this matter:

Chris S. Leason
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225

XI. SEVERABILITY

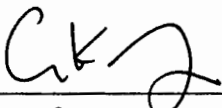
87. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

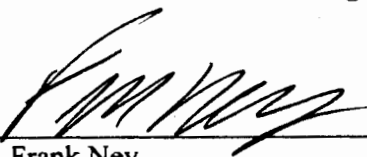
88. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Agrium U.S. Inc.

By:  Dated: Sept 2/2011
Print Title: VP, Agrium US Inc.
Respondent

U.S. Environmental Protection Agency

By:  Dated: 9/8/11
Frank Ney
Acting Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2011-4015(b)
)	
Agrium U.S. Inc.)	Proceeding under Section 3008(a) of the
Hartsville, South Carolina)	Resource Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
)	
EPA ID No.: SCD 003 350 675)	
)	
Respondent.)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is 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. The 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 Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 13th day of Sept., 2011.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

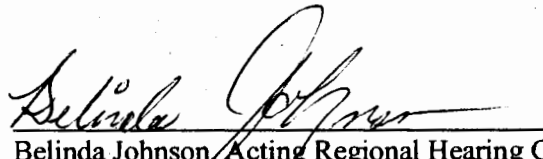
I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Agrium U.S. Inc., Hartsville, South Carolina, Docket Number: RCRA-04-2011-4015, on 9/13/2011, and on 9/13/2011, served the parties listed below in the manner indicated:

Joan Redleaf Durbin (Via EPA Internal Mail)
Associate Regional Counsel
Office of Environmental Accountability
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Quantindra Smith (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Chris S. Leason (Via Certified Mail – Return Receipt Requested)
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Date: 9/13/2011


Belinda Johnson, Acting Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511