



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 14 2018

Via Email

REPLY TO THE ATTENTION OF:

Mr. Fred Gross
General Manager
Bema Incorporated
744 North Oaklawn Avenue
Elmhurst, Illinois 60126
c/o Mr. Richard J. Arendt, Esq.
rja128@aol.com

Re: Consent Agreement and Final Order
Bema Incorporated
Docket No: **RCRA-05-2019-0004**

Dear Mr. Gross:

Enclosed please find a copy of a fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on 12/14/2018, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$7,891 in the manner prescribed in paragraph 45 of the CAFO, and reference all checks with the docket number **RCRA-05-2019-0004**. Please be certain that your company's name and the docket number of this case are written on both the transmittal letter and the check, or in the comments field if you are paying by electronic funds transfer. Your payment is due on within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Daniel Chachakis, of my staff, at (312) 886-9871 or chachakis.daniel@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie Morris".

Julie Morris, Acting Chief
RCRA Branch

Attachment

cc: Mr. Todd Marvel, Illinois EPA, todd.marvel@illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

BEMA, INC.,
ELMHURST, ILLINOIS,

U.S. EPA ID No.: ILT180014870

RESPONDENT.



Docket No.: RCRA-05-2019-0004

Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. part 22.
2. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Bema, Incorporated, a corporation doing business in the State of Illinois.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

7. U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by sections 3006(b) and 3008 of RCRA, 42 U.S.C. §§ 6926(b) and 6928.

9. Respondent admits the jurisdictional allegations set forth in this document and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil, pursuant to, among others, sections 3001 – 3007, 3013 and 3014 of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934 and 6935.

12. Pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to subtitle C (sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to section 3006 of RCRA

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986, at 51 Fed. Reg. 3778 (January 31, 1986).

14. Under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of subtitle C of RCRA according to section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a civil penalty of up to \$93,750 per day for each violation of subtitle C of RCRA that occurred on or after November 2, 2015.

Factual Allegations and Alleged Violations

15. Respondent was and is a "person" as defined by 35 IAC § 720.110, 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "owner" or "operator" as those terms are defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 744 North Oaklawn Avenue, Elmhurst, Illinois (facility).

17. The facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

18. Respondent's facility is a "facility" as that term is defined in 35 IAC § 720.110 [40 C.F.R. § 260.10].¹

19. Respondent's facility specializes in manufacturing and printing flexible packaging materials.

20. On August 16, 2016, U.S. EPA conducted an inspection of Respondent's facility.

21. At all times relevant to this CAFO, Respondent's processes at the facility produced several hazardous wastes identified or listed in 35 IAC §§ 721.120 - 721.131 [40 C.F.R. parts 260-270], including but not limited to ignitable (D001), corrosive (D002), and nonspecific source spent nonhalogenated solvent (F003) hazardous wastes.

22. Respondent is a "generator" as that term is defined in 35 IAC § 720.110 [40 C.F.R. § 260.10].

23. Respondent generated more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2013, 2014, 2015 and 2016 prior to the inspection, and was a large quantity generator.

24. Respondent is subject to the regulations promulgated pursuant to subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Illinois regulations as part of the applicable state hazardous waste management program for the State of Illinois, or both.

25. At no time relevant to this CAFO had the State of Illinois issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

¹ For the purposes of this document and for convenient reference, federal corollaries to enforceable Illinois hazardous waste program requirements are provided in brackets.

26. At no time relevant to this CAFO did Respondent have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

Count I: Unauthorized Storage of Hazardous Wastes

27. Pursuant to 3005(a) or RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

28. According to 35 IAC § 722.134 [40 C.F.R. § 262.34], a generator may accumulate hazardous waste for up to 90 days without obtaining a hazardous waste storage permit if it satisfies the conditions of the exemption contained in that rule.

29. If the conditions of 35 IAC § 722.134 are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

30. At all times relevant to this CAFO, Respondent stored containers of hazardous waste on site.

31. According to 35 IAC § 722.134(a)(2) [40 C.F.R. § 262.34(a)(2)], to maintain an exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must label each container of hazardous waste accumulated on site with the date accumulation of waste begins.

32. On August 16, 2016, the U.S. EPA inspector observed that Respondent stored hazardous waste in one container in Ink Trailer 2 that was not labeled with the date accumulation began.

33. According to 35 IAC § 722.134(a)(3) [40 C.F.R. § 262.34(a)(3)], to maintain an exemption from the requirement to have an operating permit or interim status, a generator of

hazardous waste must label each container of hazardous waste accumulated on site with the words "Hazardous Waste."

34. On August 16, 2016, the U.S. EPA inspector observed that Respondent stored hazardous waste in three containers, one in Ink Trailer 1 and two in Ink Trailer 2, that were not marked or labeled with the words "Hazardous Waste."

35. According to 35 IAC §§ 722.134(c)(1)(A) and 725.273(a) [40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a)], to maintain an exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste accumulated at or near a point of generation must keep containers of the hazardous waste closed except when necessary.

36. On August 16, 2016, the U.S. EPA inspector observed that Respondent maintained one container of hazardous waste in the distillation room near a point of generation which was neither closed nor in use.

37. According to 35 IAC §§ 722.134(a)(4) and 725.116(a)-(c) [40 C.F.R. §§ 262.34(a)(4) and 265.16(a)-(c)], a large quantity generator of hazardous waste must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. Facility personnel must successfully complete this training program within six months after the date of their employment or assignment to a facility or to a new position at a facility, and must take part in an annual review of this initial training thereafter.

38. During the August 16, 2016 inspection, the U.S. EPA inspector requested of Respondent, as a large quantity generator of hazardous waste, to review its training records, but found Respondent did not have a program of classroom instruction or on-the-job training that teaches newer facility personnel to perform their duties in a way that ensures the facility's

compliance with requirements of RCRA, and Respondent did not give its employees an annual review of that initial training.

39. Respondent's failure to properly label and mark each container holding hazardous waste, its failure to manage satellite containers properly, and its failure to develop and implement a hazardous waste training program and review it annually with its employees subjects Respondent to the permit requirements of 35 IAC § 703.180 [40 C.F.R. §§ 270.1(c) and 270.10(a), (d), and 270.13].

40. Respondent's storage of hazardous waste without a permit or interim status violated section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

Count II: Failure to Submit Annual Reports to State

41. Under 35 IAC § 722.141(a) [40 C.F.R. § 262.41(a)], a generator of hazardous waste who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of an annual report to the Illinois Environmental Protection Agency (IEPA) each March 1 reflecting generation for the preceding calendar year.

42. During the August 16, 2016 inspection, the U.S. EPA inspector found that Respondent had not submitted annual reports to the IEPA for calendar years 2014 or 2015.

43. Respondent's failure to submit annual reports to the IEPA for calendar years 2014 or 2015 violated 35 IAC § 722.141(a) [40 C.F.R. § 262.41(a)], and is, therefore, a violation of section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Civil Penalty

44. Pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle the RCRA counts of this action is \$7,891. In determining the penalty amount, Complainant considered the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and the nature, circumstances, extent and gravity of the violations. Complainant also considered Respondent's willingness to undertake the supplemental environmental project described below, Respondent's cooperation in settling this matter and U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

45. Within 30 days after the effective date of this CAFO, Respondent must pay \$7,891 as a civil penalty for the RCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: *In re: Bema, Inc.*, and the docket number of this CAFO.

46. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket numbers, must accompany the payment. Respondent must send a copy of the checks and transmittal letter, by U.S. mail or email, to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Daniel Chachakis (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

chachakis.daniel@epa.gov

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
guenther.robert@epa.gov

47. This civil penalty is not deductible for federal tax purposes.

48. If Respondent does not timely pay this civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of these civil penalty are not reviewable in a collection action.

49. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

50. Respondent must complete a supplemental environmental project (SEP) designed to protect human health and the environment by improving its hazardous waste storage.

51. At its Elmhurst facility, Respondent must complete the SEP as follows: by January 31, 2019, Respondent will install a new self-contained, engineered waste accumulation building that will improve Respondent's management of hazardous waste and lessen the risk of releases and impacts to public health and the environment.

52. Respondent must spend at least \$61,217 to purchase and install the waste accumulation building described in the previous paragraph.

53. By executing this CAFO, Respondent certifies as follows:

I certify that Bema, Inc., is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date I am signing this CAFO. I further certify that Bema, Inc., has not received, and is not negotiating to receive, credit for the SEP in any other action.

I further certify that Bema, Inc., is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

54. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

55. Respondent must submit a SEP completion report to U.S. EPA by February 28, 2019. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

56. Respondent must submit all notices and reports required by this CAFO by first class or overnight mail to Mr. Chachakis of the RCRA Branch at the address provided in paragraph 46, above. With prior consultation, Respondent may submit these notices and reports by email to Mr. Chachakis at chachakis.daniel@epa.gov.

57. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

58. Following receipt of the SEP completion report described in paragraph 55, above, U.S. EPA must notify Respondent in writing within 60 days that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 60, below.

59. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 60, below.

60. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:
- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 52, Respondent must pay a penalty of \$30,000.
 - b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 52, Respondent will not be liable for a stipulated penalty under subparagraph a, above.
 - c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 52, Respondent must pay a penalty of \$5,000.
 - d. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 through 30 th day
\$500	31 st day and beyond

61. U.S. EPA's reasonable determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

62. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 45-46, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

63. Any public statement that Respondent makes referring to the SEP must include the following language, "Bema, Inc., undertook this project under the settlement of the United

States Environmental Protection Agency's enforcement action against Bema for violations of hazardous waste storage requirements of the Resource Conservation and Recovery Act.”

64. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

65. Respondent certifies that it is complying fully with applicable requirements of RCRA, 42 U.S.C. §§ 6901 – 6939e, the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized Illinois corollaries to the federal regulations.

66. Consistent with the Consolidated Rules, 40 C.F.R. §22.5(b)(2), the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses:

guenther.robert@epa.gov (for Complainant) and rja128@aol.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

67. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

68. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

69. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

70. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

71. The terms of this CAFO bind Respondent, its successors, and assigns.

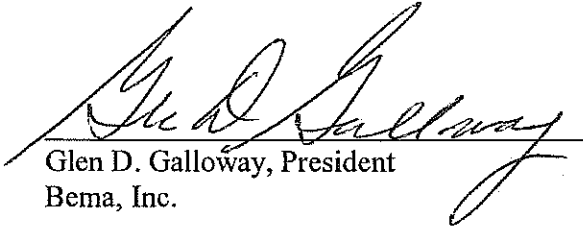
72. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

73. Each party agrees to bear its own costs and attorney's fees in this action.

74. This CAFO constitutes the entire agreement between the parties.

Bema, Inc., Respondent

11/28/2018
Date


Glen D. Galloway, President
Bema, Inc.

United States Environmental Protection Agency, Complainant

12/12/2018
Date

Michael D. Harris *for T.G.*
Tinka G. Hyde, Director
Land and Chemicals Division

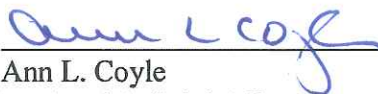
In the Matter of:
Bema, Inc., RCRA-05-2019-0004
Docket No.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12/14/18

Date



Ann L. Coyle

Regional Judicial Officer

United States Environmental Protection Agency

Region 5

In the matter of: Bema Incorporated
EPA ID Number: IL T180014870
Docket Number: **RCRA-05-2019-0004**

CERTIFICATE OF SERVICE


I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number **RCRA-05-2019-0004**, which was filed on 12/14/2018, in the following manner to the addressees:

Copy by e-mail to
Attorney for Respondent: Richard J. Arendt, Esq.
rja128@aol.com

Copy by e-mail to
Attorney for Complainant: Robert Guenther
guenther.robert@epa.gov

Copy by e-mail to
Case Assignee: Daniel Chachakis
chachakis.daniel@epa.gov

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: December 14, 2018 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5