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** FILED **
U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA- 09-2016- <u>0005</u>
Bachem Americas, Inc.)	
)	CONSENT AGREEMENT AND
EPA ID No. CAD077243640)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Bachem Americas, Inc. ("Respondent").
2. Respondent owns and operates a facility located at 3132 Kashiwa Street in Torrance, California (the "Facility"). The Facility's EPA Identification Number is CAD077243640. Respondent develops and produces active pharmaceutical ingredients via solid-phase peptide synthesis at the Facility.
3. On April 29, 2015, inspectors from EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility. The purpose of the inspection was to determine the Facility's compliance with applicable federal environmental statutes and regulations, and in particular RCRA, as amended, the regulations in 40 C.F.R. Parts 261-265, 268, 273 and 279, and the regulations adopted by the California authorized program under RCRA in the California Code of Regulations ("C.C.R."), Title 22, Division 4.5 and the California Health and Safety Code, Division 20.¹ Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated California Health & Safety Code § 25100

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements where approved and authorized by the United States. Corresponding Federal citations are provided in brackets.

et seq. and the regulations adopted pursuant thereto, as approved and authorized by the United States.

4. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) comply with air emission standards for equipment leaks, in violation of 22 C.C.R. §§ 66265.1050(c), 66265.1057, 66265.1064 [*see also* 40 C.F.R. §§ 265.1050(c), 265.1057, 265.1064]; (2) close hazardous waste containers, in violation of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 265.173]; and (3) obtain a permit for storage of hazardous waste (storage over 90 days and failure to properly mark and label hazardous waste accumulation containers), in violation of the requirements in 22 C.C.R. § 66270.1(c) [40 C.F.R. § 270.1(c)]. These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.

B. JURISDICTION

5. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
6. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
7. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
8. Respondent is a large quantity "generator" of hazardous waste, generating greater than 1,000 kilograms of hazardous waste in one month. *See* 22 C.C.R. §§ 66260.10, 66262.34 [*see also* 40 C.F.R. §§ 260.10, 262.34].
9. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
10. Respondent generates and accumulates, or has generated and accumulated, materials that are "solid wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. § 261.2].

11. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), 42 U.S.C. § 6903, and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, acetonitrile (D001), trifluoroacetic acid (TFA), methylene chloride debris (F002), and fluorescent lamps (D009).
12. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of California's authorized hazardous waste program, found at California Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Enforcement Division.

C. ALLEGED VIOLATIONS

COUNT I

(failure to comply with air emission standards for equipment leaks)

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.34] allows generators of hazardous waste to accumulate such waste on-site for up to 90 days without a permit or grant of interim status provided that, among other things, the waste is placed in containers and the generator complies with the air emissions standards for equipment leaks found at 22 C.C.R. § 66265.1050 *et seq.* [*see also* 40 C.F.R. § 265.1050 *et seq.*].

18. 22 C.C.R. § 66265.1050 [*see also* 40 C.F.R. § 265.1050] indicates that the regulations in Title 22, Chapter 15, Article 28 (Air Emissions Standards for Equipment Leaks) apply to owners and operators of facilities that treat, store or dispose of hazardous waste and, specifically, to equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in, among other things, “a unit that is exempt from permitting under the provisions of 66262.34(a) . . . and is not a recycling unit under the provisions of section 66261.6.” At the time of the inspection, wastes generated at the Facility contained more than 10% organic concentrations by weight and were managed in a unit that was exempt from permitting under the provisions of 22 C.C.R. § 66262.34(a) and was not a recycling unit under the provisions of 22 C.C.R. § 66261.6.
19. In accordance with 22 C.C.R. § 66265.1050(c) [*see also* 40 C.F.R. § 265.1050(c)], each piece of equipment “shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.” At the time of the inspection, equipment at the Facility subject to this requirement (*i.e.*, the 3,000 gallon and two 1,500 gallon tanks and ancillary equipment that contained or contacted D001), was not marked in such a manner as to readily distinguish it from other equipment.
20. In accordance with 22 C.C.R. § 66265.1057(a) [*see also* 40 C.F.R. § 265.1057(a)], each valve in gas/vapor or light liquid service “shall be monitored monthly to detect leaks by the methods specified in Section 66265.1063(b).” In accordance with 22 C.C.R. § 66265.1063(b), leak detection monitoring required by 22 C.C.R. §§ 66265.1052 through 66265.1062 shall comply with Reference Method 21 in 22 C.C.R. § 66260.11 [*see also* 40 C.F.R. Part 60]. At the time of the inspection, valves in gas/vapor or light liquid service at the Facility were not monitored monthly in accordance with Reference Method 21.
21. In accordance with 22 C.C.R. § 66265.1064(b)(1) [*see also* 40 C.F.R. § 265.1064(b)(1)], owners and operators of equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in, among other things, “a unit that is exempt from permitting under the provisions of 66262.34(a) . . . and is not a recycling unit under the provisions of section 66261.6,” must maintain certain records. For each such piece of equipment, they must maintain records reflecting: an equipment identification number and hazardous waste management unit identification; approximate locations within the facility; the type of equipment; percent-by-weight total organics in the hazardous waste stream at the equipment; the hazardous waste state at the equipment (*e.g.*, gas/vapor or liquid); and the method of compliance with the standard (*e.g.*, “monthly leak detection and repair” or “equipped with dual mechanical seals”). At the time of the inspection, the records required to be maintained in accordance with 22 C.C.R. § 66265.1064(b)(1) were not being maintained at the Facility.

22. Therefore, EPA alleges that Respondent failed to comply with the air emission standards for equipment leaks, in violation of 22 C.C.R. §§ 66265.1050(c), 66265.1057, and 66265.1064(b)(1) [*see also* 40 C.F.R. §§ 265.1050(c), 265.1057 and 265.1064(b)(1)].

COUNT II

(failure to close containers of hazardous waste)

23. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 22 C.C.R. § 66262.34(a) requires that a generator may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 262.34 and 40 C.F.R. § 265.173].
25. 22 C.C.R. § 66265.173(a) provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173(a)].
26. At the time of the inspection, EPA inspectors observed approximately twenty (20) containers of D001 hazardous waste located in satellite accumulation areas were open and waste lamps that were not properly contained.
27. Therefore, EPA alleges that Respondent failed to close containers of hazardous waste, in violation of 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)].

COUNT III

(failure to obtain a permit for storage of hazardous waste)

28. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
29. 22 C.C.R. § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)] allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status, provided that the generator complies with certain requirements.
30. 22 C.C.R. § 66262.34(a) [*see also* 40 C.F.R. § 262.34(a)] allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status provided that the generator labels each hazardous waste tank or container with the words "hazardous waste" and labels each hazardous waste tank or container with the date accumulation of the waste begins. The label must be visible for inspection.

31. At the time of the CEI, EPA inspectors observed three containers of D001 hazardous waste located in the satellite areas and waste lamps that were not marked with the words "hazardous waste." At the time of the CEI, EPA inspectors also observed a 5-gallon container of D001 hazardous waste that was not labeled with the required accumulation start date. Therefore, EPA alleges that Respondent failed to label containers appropriately.
32. EPA inspectors also observed two 55-gallon containers of F002 hazardous waste that were stored fourteen (14) days beyond the 90-day accumulation time limit.
33. Since Respondent did not meet the permit exemption requirements, EPA alleges that Respondent stored waste without a permit, in violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

D. CIVIL PENALTY

34. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy ("Penalty Policy") as amended by the 2010 Revision to Adjusted Penalty Policy Matrices Package issued on November 16, 2009, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWENTY-TWO THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS (\$22,376.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy, as amended.

E. SUPPLEMENTAL ENVIRONMENTAL PROJECT

35. As part of the settlement of this enforcement action, Respondent shall perform an emergency planning and preparedness supplemental environmental project ("SEP") to enhance the emergency response capabilities of the Torrance Fire Department. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree is intended to provide significant environmental or public health protection and improvements.
36. The Torrance Fire Department provides, among other things, hazardous materials response services to the City of Torrance, California. In developing this SEP, Bachem

contacted the Torrance Fire Department and inquired whether it could use emergency planning and preparedness assistance to better plan for and respond to spills or releases. In response to this inquiry, the Torrance Fire Department requested the purchase of tablets and laptops to improve its ability to provide response services by gathering and storing community information which will be needed for emergency planning and preparedness.

37. Within sixty (60) days of the effective date of this CA/FO, Respondent shall purchase the following emergency response equipment for the Torrance Fire Department: (1) ten convertible laptops with associated docking stations, cases, a technical support plan and warranty; and (2) twelve tablets with rugged cases and a warranty.
38. Respondent shall use all reasonable efforts to provide equipment to the Torrance Fire Department as described above, but may substitute equipment that supports emergency planning and preparedness that is similar in total cost to the equipment described above with the consent of the Torrance Fire Department. Such adjustments may change the total amount spent.
39. Respondent shall expend at least TWENTY-NINE THOUSAND DOLLARS (\$29,000) to complete the SEP described herein.
40. Within one hundred and twenty (120) days of the Effective Date of the CA/FO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts, and correspondence with the Torrance Fire Department; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the project; and (iii) certification that the project has been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.
41. In the SEP Completion Report, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

42. Failure to complete the SEP or submit the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Section I below.
43. Respondent shall maintain legible copies of documentation of the underlying data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for at least three (3) years, and Respondent shall provide the documentation of any such underlying research and data to EPA within fourteen (14) days of EPA's request for such information.
44. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following: (a) that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least \$29,000; (b) that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (c) that the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CA/FO; (d) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (e) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (f) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and (g) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this CA/FO and has inquired of the Torrance Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Torrance Fire Department that it is not a party to such a transaction.
45. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

F. ADMISSIONS AND WAIVERS OF RIGHTS

46. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into, and issue, this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with

this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

47. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

48. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and H has been paid in accordance with Section H, the SEP is completed in accordance with Section E, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
49. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
50. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

51. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-TWO THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS (\$22,376.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
52. Respondent shall submit payment of TWENTY-TWO THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS (\$22,376.00) within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

In the matter of Bachem Americas, Inc.
EPA ID No. CAD077243640
Consent Agreement And Final Order

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

US 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 US currency

PNC Bank

808 17th 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
Enter "sfo1.1" in the search field
Open form and complete required fields

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

53. At the time payment is made, a copy of the payment transmittal shall be sent to:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Aisha Kennedy (ENF 2-2)
Enforcement Division
Waste and Chemical Section
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

54. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

55. In the event Respondent fails to submit a payment to EPA by the time required in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1000) per day for sixteenth to thirtieth day of delay, and TWO THOUSAND DOLLARS (\$2,000) per day for each day of delay thereafter.
56. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of THIRTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$34,800) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 59.

57. If Respondent demonstrates that the SEP tasks described in Paragraph 37 were completed, but Respondent incurs *less* than 90 percent of the costs required to be incurred pursuant to Paragraph 39 for the tasks described in Paragraph 37, Respondent shall pay a stipulated penalty to the United States that is the difference between FIVE THOUSAND EIGHT HUNDRED DOLLORS (\$5800) and the actual costs incurred by Respondent toward completion of the tasks described in Paragraph 37.
58. If Respondent fails to demonstrate that the SEP tasks in Paragraph 37 were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks; and (ii) certifies, with supporting documentation, that *at least* 90 percent of the costs that were required to be incurred pursuant to Paragraph 39 were incurred for the SEP tasks described in Paragraph 37, Respondent shall not be liable for any stipulated penalty under this paragraph.
59. For failure to submit the SEP Completion Report required by Paragraphs 40 and 41, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed a total of \$34,800.
60. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Director, Enforcement Division, EPA Region IX.
61. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period.
62. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraphs 52 and 53.
63. The payment of stipulated penalties shall not alter in any way Respondent's obligations to complete performance required hereunder.

64. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
65. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. CERTIFICATION OF COMPLIANCE

66. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste program including, 22 CCR §§ 66265.1050(c), 66265.1057, 66265.1064 [*see also* 40 C.F.R. §§ 265.1050(c), 265.1057, 265.1064]; 22 CCR § 66265.173 [*see also* 40 C.F.R. § 265.173]; and 22 CCR § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)], that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

K. RESERVATION OF RIGHTS

67. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
68. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.

69. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.

70. This CA/FO is not intended to be nor shall it be construed as a permit.

L. OTHER CLAIMS

71. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondent of any other claim, 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 the Facility.

M. MISCELLANEOUS

72. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

73. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

74. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

In the matter of Bachem Americas, Inc.
EPA ID No. CAD077243640
Consent Agreement And Final Order

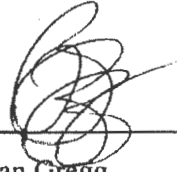
IT IS SO AGREED.

May 26, 2016

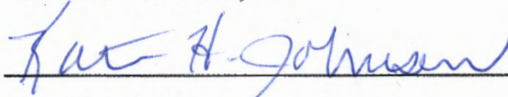
Date

6/22/16

Date



Brian Gregg
Chief Operating Officer
Bachem Americas, Inc.



Kathleen Johnson, Director
Enforcement Division
U.S. Environmental Protection Agency, Region 9

In the matter of Bachem Americas, Inc.
EPA ID No. CAD077243640
Consent Agreement And Final Order

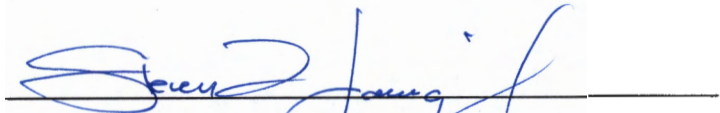
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09 -2016- *0005*) be entered and that Bachem Americas, Inc. pay a civil penalty of TWENTY-TWO THOUSAND THREE HUNDRED SEVENTY-SIX (\$22,376.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order, pursuant to Section H of the Consent Agreement, and implement the Supplemental Environmental Project described in Part E of this CA/FO in accordance with all terms and conditions of the Consent Agreement and Final Order.

This Final Order shall be effective upon filing with the Regional Hearing Clerk.

06/23/16

Date

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Bachem Americas, Inc. (Docket #: RCRA-09-2016-00 0005)** was filed with the Regional Hearing Clerk (ORC-1), U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

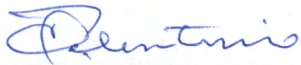
A copy was mailed via CERTIFIED MAIL to:

Mr. Brian Gregg
Chief Operating Officer
Bachem Americas, Inc.
3132 Kashiwa Street
Torrance, CA 90505

CERTIFIED MAIL NUMBER: 7001 0320 0002 0253 8973

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebekah Reynolds, Esq. (ORC-3)
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



for: _____
Acting Regional Hearing Clerk
U.S. EPA, Region IX

6/27/16

Date