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 HEARINGS CLERK
 EPA--REGION 10

BEFORE THE
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
)	
)	Docket No.: RCRA-10-2014-0127
)	
KRONOS MICRONUTRIENTS, LP)	
Moxee, Washington)	
)	
Respondent)	CONSENT AGREEMENT AND FINAL ORDER
)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 3006(b) of RCRA, U.S.C. § 6926(b), EPA granted the State of Washington final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.4. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), EPA may enforce the federally-approved Washington State Dangerous Waste program.

1.5. Notification of this action has been given to the Washington State Department of Ecology (“Ecology”) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), but Ecology is not a party to this CAFO.

1.6. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Kronos Micronutrients, LP (“Respondent”) agrees to the issuance of, the Final Order contained in Section V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13 and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations and permit requirements that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation doing business in the State of Washington as Kronos Micronutrients, LP.

3.2. Respondent is a "person" as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10 and Washington Administrative Code ("WAC") 173-303-040.

3.3. At all times relevant to the allegations set forth herein, Respondent is and has been the "owner" and "operator" of the "facility" located at 301 West Charron Road, Moxee, Washington ("Facility"), as those terms are defined at 40 C.F.R. § 260.10 and WAC 173-303-040.

3.4. Respondent's Facility is a manufacturer of zinc-based micronutrient fertilizers.

3.5. Pursuant to 40 C.F.R. § 261.24 and WAC 173-303-090(8), cadmium (D006) and lead (D008) are regulated as hazardous and dangerous wastes, respectively.

3.6. At all times relevant to the allegations set forth herein, at its Facility, Respondent generated, stored, and disposed of cadmium and lead hazardous and dangerous wastes.

3.7. Respondent generated at least 2,000 tons of cadmium and lead hazardous and dangerous wastes in 2011.

3.8. On June 19, 2012, authorized representatives of EPA conducted a RCRA compliance inspection ("Inspection") of Respondent's Facility.

Count 1: Land Disposal of Dangerous Waste Without a Permit or Interim

Status

3.9. WAC 173-303-800 requires, among other things, that the owner or operator of a facility must have a permit or interim status for the disposal of dangerous waste at that facility. In November 2007, Respondent became the owner and operator of the 301 West Charron Road facility and became the Permittee under the dangerous waste permit issued jointly by Ecology and EPA to the previous owner/operator, Bay Zinc Company. The permit was for storage, but not disposal, of dangerous waste.

3.10. The Inspection revealed that cadmium and lead dangerous wastes had been disposed of in the soil adjacent to a portion of the Facility used to manage large roll-off containers of dangerous wastes, identified by Kronos as the "Bone Yard". Analytical results from EPA's samples of the discolored soil confirmed that the samples exceeded the toxicity characteristic limits for cadmium and lead specified at 40 C.F.R. Part 268, Subpart D.

3.11. Respondent submitted a report to the Washington Department of Ecology on July 19, 2013 that identified the primary area of impact in the Bone Yard area as grids AOC-3-18 and AOC-3-19.

3.12. Respondent's permit for storage of dangerous waste did not allow for land disposal of dangerous waste at the Facility.

3.13. Respondent violated WAC 173-303-800 by land disposing of dangerous waste (cadmium and lead) without a permit or interim status from at least June 2012 to December 2012.

Count 2: Failure to Meet Land Disposal Restrictions for Prohibited Dangerous Wastes

3.14. Under 40 C.F.R. § 268.9(c), incorporated by reference at WAC 173-303-140(2)(a), no prohibited waste which exhibits a characteristic under 40 C.F.R. Part 261, Subpart C may be land disposed unless the waste complies with the treatment standards under Subpart D. The treatment standards specified at 40 C.F.R. Part 268, Subpart D, require that non-wastewaters that exhibit, or are expected to exhibit the characteristic of toxicity for cadmium based on the toxicity characteristic leaching procedure (TCLP), must contain less than 0.11 mg/l cadmium TCLP and meet 40 C.F.R. § 268.48 standards. The treatment standards specified at 40 C.F.R. Part 268, Subpart D also require that non-wastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the TCLP, must contain less than 0.75 mg/l lead TCLP and meet 40 C.F.R. § 268.48 standards.

3.15. Analytical results of the dangerous wastes that were land disposed at the Facility confirmed that these wastes exceeded the treatment standards specified at 40 C.F.R. Part 268, Subpart D for cadmium and lead.

3.16. Respondent violated 40 C.F.R. § 268.9(c), as incorporated by reference at WAC 173-303-140(2)(a), by failing to meet the treatment standards under 40 C.F.R. Part 268, Subpart D for the prohibited land disposal of dangerous wastes cadmium and lead.

Count 3: Failure to Maintain Personnel Training Records and a Written Training Plan at the Facility – Permit Condition I.1

3.17. Permit condition I.1 requires, in addition to record maintenance requirements specified elsewhere in the permit, that the Permittee shall maintain at the Facility, until closure is completed and certified by an independent registered professional engineer, certain documents as

well as amendments, revisions, and modifications to those documents, including a personnel training plan and other records required by WAC 173-303-330(2) and the permit.

3.18. WAC 173-303-330(2) requires the owner/operator to develop a written training plan, which must be kept at the Facility and which must include certain documents and records for the requisite training for each position related to dangerous waste management at the facility.

3.19. Facility personnel were unable to locate or provide copies of the Facility personnel training plan or the requisite personnel training records at the time of the Inspection.

3.20. Respondent violated Permit Condition I.1 by failing to maintain a written personnel training plan and personnel training records at the Facility.

Count 4: Failure to Keep Dangerous Waste Containers in Good Condition – Permit Condition III.B

3.21. Permit condition III.B requires that if a container holding dangerous waste is not in good condition (e.g. there is severe rusting, apparent structural defects) or if it begins to leak, the Permittee shall transfer the dangerous waste from such container to a container that is in good condition, or otherwise manage the waste in compliance with the conditions of the permit.

3.22. At the time of the Inspection, a 5-gallon container marked both as “Fluorad” and “Flammable Liquid,” and showing signs of both severe rusting and structural damage, was on a pallet inside a building at the Facility. Five additional 5-gallon containers marked as, “Oxidizer” and “Sodium Chlorate,” showing signs of severe rusting, were on the same pallet. Subsequent to the EPA inspection, the containers of Fluorad and Sodium Chlorate were confirmed to be D001 dangerous wastes. On January 4, 2013, Respondent disposed of these containers and their contents as dangerous wastes.

3.23. Respondent violated Permit Condition III.B. by failing to keep dangerous wastes containers in good condition and failing to manage those wastes in compliance with the conditions of the permit.

Count 5: Failure to Implement the Facility Contingency Plan – Permit Condition

II.H.1

3.24. Permit condition II.H.1 requires that, whenever there is a fire, explosion, release of dangerous waste or dangerous waste constituents, or other circumstances which threaten or could threaten human health or the environment, the Permittee shall immediately implement the provisions of the contingency plan as provided in Permit Attachment A – Part V, Section 8, pursuant to WAC 173-303-360(2).

3.25. The contingency plan provisions must be carried out immediately upon discovery of a release of regulated wastes that have the potential for causing harm to the environment or public health. Any emergency causing initiation of the contingency plan must be reported within 15 days of discovery to Ecology and the EPA Regional Administrator in accordance with 40 C.F.R. § 264.56(j).

3.26. At the time of the Inspection, EPA inspectors questioned Respondent's Facility personnel regarding the discolored soil, and sampled areas of affected soil. EPA provided the analytical results to Respondent on September 12, 2012, showing that these wastes exceeded the treatment standards specified at 40 C.F.R. Part 268, Subpart D, for cadmium and lead.

3.27. Respondent was aware of the release of dangerous wastes at least on the date of the Inspection and this was confirmed by Respondent's receipt of EPA's analytical results on September 12, 2012.

3.28. Respondent did not implement its contingency plan upon discovery of a release of dangerous wastes and did not report the release of regulated cadmium and lead dangerous wastes as required within 15 days of discovery.

3.29. Respondent violated Permit Condition II.H.1. by failing to immediately implement its contingency plan upon discovery of the release of regulated dangerous wastes.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement action brought by EPA against Respondent.

4.4. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements.

4.5. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$206,900.

4.6. Respondent agrees to undertake the actions specified in the Final Order and to pay the total civil penalty set forth in Paragraph 4.5 in four payments according to the following schedule calculated from the effective date of the Final Order: the first payment of \$51,725 due no later than 30 days after the effective date; the second payment of \$51,813.60 (which includes \$133.59 interest) due no later than 60 days after the effective date; the third payment of \$51,813.60 (which includes \$86.22 interest) due no later than 90 days after the effective date; the

fourth payment of \$51,813.60 (which includes \$45.99 interest) due no later than 120 days after the effective date. Payments as shown include interest on the total amount of the penalty still outstanding at the time of each payment.

4.7. Payments under this CAFO must be made by cashier's check or certified check made payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.8. Respondent must serve photocopies of the check described in Paragraph 4.7 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Peter Magolske, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such a failure may also subject Respondent to a civil action to collect the assessed penalty under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.10.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.10.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.10.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.11. Under Section 3008(c) of RCRA, 42 U.S.C. 6928(c), failure to take corrective action within the time specified in the Final Order may subject Respondent to additional civil penalties for each day of noncompliance.

4.12. The penalty described in Paragraph 4.5, including any additional costs incurred under Paragraphs 4.10 and 4.11, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.15. Except as described in paragraphs 4.10 and 4.11, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.16. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

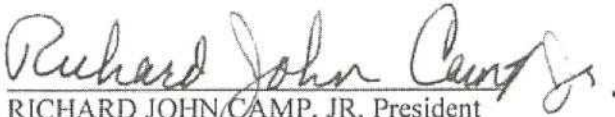
4.17. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.18. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT

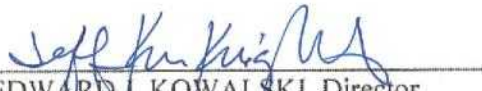
Sept 9, 2014


RICHARD JOHN CAMP, JR, President
RJCI, Inc., General Partner
KRONOS MICRONUTRIENTS, LP

DATED:

FOR COMPLAINANT

September 10, 2014


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
U.S. EPA REGION 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. Based on the findings contained in the Consent Agreement, Respondent is also ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

5.3. Respondent shall comply with RCRA and with its Permit and shall, within 60 days of the effective date of the Final Order, provide to EPA certification that it has done so in regard to the following:

5.3.1 Submission to Ecology, based on current information, of (a) a Closure Plan (pursuant to WAC 173-303-610) for the impacted areas that are the subject of this action, (b) a revised updated Facility Closure Cost Estimate (pursuant to Permit Condition II.M.2), and (c) adequate Financial Assurance covering the revised Cost Estimate (pursuant to Permit Condition II.N.).

5.3.2 After consultation with Ecology, implementation of specific appropriate measures to satisfy the inspection requirements of WAC 173-303-320 and the use and management of containers requirements of WAC 173-303-630, and to ensure maintenance and operation of its facility in a manner (pursuant to WAC 173-303-340) that minimizes the possibility of any unplanned, sudden or non-sudden release of dangerous waste or dangerous waste constituents.

5.4. The Certification shall be in the following form signed by a responsible official, authorized to bind Respondent: **"I certify under penalty of law that, based on information**

and belief formed after reasonable inquiry, the statements and information contained in this document accurately reflect the compliance status of this facility and are true, accurate, and complete.”

By: Date / Signature / Title / Printed Name of Responsible Official


5.5. Respondent shall provide compliance documentation required to the following address:

Peter Magolske, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

5.6. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of RCRA, and regulations promulgated or permits issued thereunder.

5.7. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of September 2014



M. SOCORRO RODERIGUEZ
Regional Judicial Officer
US EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: In the Matter of: Kronos Micronutrients, LP, Docket #: RCRA-10-2014-0127**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

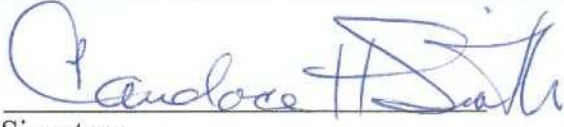
The undersigned certifies that a true and correct copy of the document was delivered to:

Joan C. Shirley, Assistant Regional Counsel
U.S. EPA REGION 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
shirley.joan@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Beth Ginsberg, Attorney
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
bginsberg@stoel.com

DATED this 12th day of September, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10