



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 30 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL 7009 1680 0000 7677 8497**  
**RETURN RECEIPT REQUESTED**

Mr. Scott J. Fair  
President  
Custom Chemicals, Incorporated  
Post Office Box 3191  
Springfield, Illinois 62708

Re: Consent Agreement and Final Order  
Custom Chemicals, Incorporated  
Docket No: RCRA-05-2014-0016

Dear Mr. Fair:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on September 30, 2014, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$250 in the manner prescribed in paragraph 72 of the CAFO, and reference all checks with the docket number RCRA-05-2014-0016. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gary J. Victorine".

Gary J. Victorine, Chief  
RCRA Branch

Enclosures

cc: Todd Marvel, Illinois Environmental Protection Agency; todd.marvel@illinois.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. RCRA-05-2014-0016</b>
	)	
<b>Custom Chemicals, Incorporated aka Custom Chemical Engineering</b>	)	<b>Proceeding to Commence and Conclude an Action to Assess a Civil Penalty</b>
	)	
<b>Springfield, Illinois</b>	)	<b>Under Section 3008(a) of the Resource</b>
<b>U.S. EPA ID No. ILR000148718</b>	)	<b>Conservation and Recovery Act,</b>
<b>Respondent</b>	)	<b>42 U.S.C. § 6928(a)</b>
	)	

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**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, as amended, 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. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. 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).
4. Respondent is Custom Chemicals, Incorporated, also known as Custom Chemical Engineering, a corporation doing business in the State of Illinois.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. 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.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

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

9. Respondent admits the jurisdictional allegations in this CAFO 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.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

#### **Statutory and Regulatory Background**

12. 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, pursuant to Sections 3001 – 3007, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927.

13. 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.

14. 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. 51 Fed. Reg. 3778 (January 31, 1986).

15. 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.

16. 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 \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

17. Respondent was and is a "person" as defined by 35 IAC § 720.110 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent conducted operations at its facility located at 4524 Industrial Drive, Springfield, Illinois (the facility).

19. Respondent's facility is a "facility" and that term is defined under 35 IAC

§ 720.110 and 40 C.F.R. § 260.10.

20. At all times relevant to this complaint Respondent used methylene chloride, fragrances, phenol, benzyl alcohol, rain guard concentrate, formic, acetic acid, aqua chloride, methanol, phosphoric acid, ammonium bifluoride, sodium hydroxide, and potentially other materials to manufacture chemical cleaning compounds, paint, aircraft paint strippers and related products.

21. On August 20, 2012, U.S. EPA issued to Respondent a Request for Information in order to determine Respondent's compliance with Subtitle C of RCRA.

22. On September 6, 2012, Respondent provided to U.S. EPA its Response to U.S. EPA's Request for Information ("Response").

23. Respondent provided to U.S. EPA in its response copies of Uniform Hazard Waste Manifests (Respondent's manifest).

24. Respondent's manifests characterized off-site shipment of certain waste as follows:

MANIFEST TRACKING NO.	WASTE TYPE	AMOUNT	ASSOCIATED WASTE CODE UNDER 40 C.F.R. § 261, Subpart D
007201749 JJK	WASTE PAINT	8,000 pounds	D001
007203282 JJK	WASTE PAINT	715 gallons	D001
	WASTE HYDROCHLORIC ACID	220 gallons	D002
	WASTE LIQUID CHROMIUM	165 gallons	D007
007768860 JJK	WASTE PAINT STRIPPER RINSE WATER	1,100 gallons	U080
008225433 JJK	WASTE PAINT STRIPPER RINSE WATER	295 gallons	U080
	WASTE LIQUID CHROMIUM	165 gallons	D007
	WASTE CORROSIVE LIQUID	55 gallons	D002

25. Respondent's process produced wastes identified in paragraph 24.

26. The waste items identified in paragraph 24 are "solid wastes" as that term is defined at 40 C.F.R. § 261.2 (a) and (b).

27. The solid wastes identified in paragraph 24 are hazardous wastes that are characteristic for ignitability (D001), corrosivity (D002), chromium toxicity (D007), or a listed hazardous waste (U080).

28. The hazardous waste identified at paragraph 24 are not excluded under 40 C.F.R. §§ 260.20 and 260.22.

29. Respondent is a “generator,” as that term is defined in 35 IAC § 720.110 and 40 C.F.R. § 260.10.

30. Respondent generated and managed hazardous waste at the facility on or after November 19, 1980.

31. The Illinois Environmental Protection Agency (IEPA) inspected Respondent’s facility on June 16, 2010, and issued a Violation Notice to Respondent on or about July 28, 2010.

32. Respondent responded to the IEPA Violation Notice on or about October 5, 2010.

33. IEPA rejected Respondent’s response to the Violation Notice and issued a Compliance Commitment Rejection letter to Respondent on or about October 25, 2010.

**Count 1: Failure to conduct hazardous waste determination 40 C.F.R. § 262.11**

34. Complaint incorporates paragraphs 12-33 of this Complaint as though set forth in this paragraph.

35. A person who generates a solid waste must determine if that waste is a hazardous waste. See 35 I.A.C. 722.111 and 40 CFR § 262.11.

36. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation, the generator must determine if its solid waste is a hazardous waste. See 35 I.A.C. 725.105, referring to 35 I.A.C. 722.111, and 40 CFR § 261.5(g)(1),

referring to 40 CFR § 262.11.

37. Respondent notified IEPA using a RCRA Subtitle C Site Identification form, signed by Respondent on August 28, 2007, that the facility operates as a Conditionally Exempt Quantity Generator, i.e., that Respondent generates less than 100 kg of hazardous waste in a calendar month.

#### **North Wall Shelving Unit**

38. During IEPA's June 16, 2010 inspection, the IEPA inspector observed fifteen 55-gallon drums at the top of the facility's north wall shelving unit.

39. The drums referred to in paragraph 38 contained various waste car wash products.

40. Mr. Lane, Respondent's employee, stated to the IEPA inspector that the drums referred to in paragraph 38 were used in the facility's research and development of different car wash products, but were no longer in use at the time of the inspection.

41. Respondent stored the waste car wash products referred to in paragraph 38.

42. Respondent failed to conduct a hazardous waste determination on the waste car wash products referred to in paragraph 38 at a time prior to the inspection.

#### **Paint Storage Area**

43. During the IEPA's June 16, 2010 inspection, the IEPA inspector observed approximately seven 55-gallon drums of expired paint on the shelves in the facility's paint storage area.

44. Mr. Lane, Respondent's employee, stated to the IEPA inspector that the Respondent was curtailing this aspect of the business.

45. Respondent stored the waste paint referred to in paragraph 43.

46. Respondent failed to conduct a hazardous waste determination on the waste paint

referred to in paragraph 43 at time prior to the inspection.

**Room North of Paint Room**

47. During the IEPA's June 16, 2010 inspection, the IEPA inspector observed that Respondent stored approximately eighteen 55- gallon drums on an upper shelf unit in a room located north of the facility's paint room.

48. Mr. Lane stated to the IEPA inspector that Respondent no longer used the material stored in the drums referred to in paragraph 47.

49. Respondent stored the materials referred to in paragraph 47.

50. Respondent failed to conduct a hazardous waste determination on the waste materials referred to in paragraph 47 at a time prior to the inspection.

**Sump**

51. During the IEPA's June 16, 2010 inspection, the IEPA inspector observed that Respondent stored waste liquid in a sump in the facility's main mixing and production room.

52. The IEPA inspector recorded a Mini-Rae reading of 40 parts per million for the waste liquid referenced in paragraph 51, suggesting the presence of volatile compounds.

53. In its September 6, 2012 Response to U.S. EPA's Information Request, Respondent stated that there were approximately 35 gallons of waste liquid in the sump at the time of the inspection.

54. Respondent indicated on manifest 007768860JJK, line 1, dated May 12, 2012, that it disposed of the waste liquid referred to in paragraph 51 from the sump as a hazardous waste.

55. In its September 6, 2012 response, Respondent did not provide documentation of a waste determination for the waste liquid referred to in paragraph 51.

56. Respondent failed to conduct a hazardous waste determination on the waste liquid



referred to in paragraph 51 at a time prior to the inspection.

**Concrete Pad**

57. During the IEPA's June 16, 2010 inspection, the IEPA inspector observed two drums in a fenced area near the facility's southeast corner of the concrete pad; one was approximately half full of liquid, the other approximately three-quarters full of liquid.

58. Respondent provided to the IEPA inspector documentation on a waste determination for the waste liquid referred to in paragraph 57 that was done at a time after the inspection.

59. Respondent failed to conduct a hazardous waste determination on the waste liquid referred to in paragraph 57 prior to the inspection.

60. Respondent, therefore, failed to make a hazardous waste determination as required under 35 I.A.C. 722.111 [40 CFR § 262.11], and also to meet the requirement for the exclusion of its hazardous waste from full regulation.

**Count 2: Failure to obtain a hazardous waste storage permit**

61. Complainant incorporates paragraphs 12 through 60 of this Complaint as though set forth in this paragraph.

62. Pursuant to Section 3005(a) of 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.

63. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134 and 40 C.F.R. § 262.34(a).

64. A generator who accumulates hazardous waste for more than 90 days is an operator

of a storage facility and is subject to the requirements of 35 IAC Parts 724 and 725 and the permit requirements of 35 IAC §§ 703.121, 703.180 and 705.121 unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

65. At all times relevant to this complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

66. Similarly, the failure to comply with any of the conditions of 35 IAC § 722.134 [40 C.F.R. §262.34] subjects the generator of hazardous waste to the requirements of 35 IAC Parts 724 and 725 and the permit requirements of 35 IAC §§ 703.121, 703.180 and 705.121.

67. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with the requirements for owners or operators in Subpart C – Preparedness and Prevention, IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)].

68. Respondent failed to comply with the requirement in Subpart C to minimize the possibility of fire explosion or release as required by 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)] and 35 IAC § 725.131 [40 C.F.R. § 265.31], as set forth in a report prepared by the Springfield, Illinois Fire Department stating that a contract worker received chemical burns on the neck and clavicle at the Custom Chemical facility on or about October 6, 2012.

69. As a result of Respondent's failure to meet one of the conditions for the generator exemption provided by 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)], Respondent became an operator of a hazardous waste storage facility.

70. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a), and the requirement of 35 IAC §§ 703.121,

703.180 and 705.121.

**Civil Penalty**

71. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$250. In determining the penalty amount, Complainant considered the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and Respondents ability to pay. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

72. Within 30 days after the effective date of this CAFO, Respondent must pay a \$250 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state the case title and the docket number of this CAFO.

73. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Daniel F. Chachakis (LR-8J)  
RCRA Branch  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Susan Perdomo (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

75. If Respondent does not timely pay the 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. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

76. 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.

#### **General Provisions**

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

78. 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.

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

80. 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).

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

82. 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.

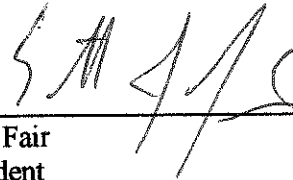
83. Each party agrees to bear its own costs and attorney's fees in this action.

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

**Custom Chemicals Incorporated, Respondent**

9-17-14

Date



Scott Fair  
President

**United States Environmental Protection Agency, Complainant**

9/24/2014

Date




Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:  
Custom Chemicals, Incorporated  
Docket No. RCRA-05-2014-0016**

**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.

9-30-2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**Consent and Final Order  
In the Matter of: Custom Chemicals, Incorporated**

**DOCKET NO: RCRA-05-2014-0016**

**CERTIFICATE OF SERVICE**


I hereby certify that today I filed the original of this Consent Agreement and Final Order ((CAFO) docket number RCRA-05-2014-0016 the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Scott J. Fair  
President  
Custom Chemicals, Incorporated  
Post Office Box 3191  
Springfield, Illinois 62708  
Certified Mail # 7009 1680 0000 7677 8497

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

On the 1<sup>st</sup> Day of October, 2014

  
\_\_\_\_\_  
RBA

Ruben B. Aridge  
Office Administrative Assistant  
United States Environmental Protection Agency  
Region V  
Land and Chemicals Division LM-8J  
77 W. Jackson Blvd, Chicago, IL 60604-3590

Certified Mail Receipt Number: 7009 1680 0000 7677 8497