



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

4APT-PTSB

AUG 28 2008

Certified Mail – Return Receipt Requested

Ms. Tanya Henderson  
Environmental Engineer  
Penn A Kem, LLC  
3324 Chelsea Avenue  
Memphis, TN 38108

SUBJ: Docket No. TSCA-04-2008-2534(b)  
Penn A Kem, LLC

Dear Ms. Henderson:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section 23 of the CAFO, the assessed penalty of \$4,385 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Keith Bates at (404) 562-8992.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

Jeananne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

2008 AUG 27 PM 3:35  
HEARINGS DIVISION  
EPA REGION IV

In the Matter of: )  
 )  
Penn A Kem, LLC )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2008-2534(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Penn A Kem, LLC.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Keith Bates  
PCB and Chemical Products  
Management Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8992.

## **III. Specific Allegations**

6. Respondent is a user of Polychlorinated Biphenyl (PCB) Items operating in the State of Tennessee and is a "person" as defined in 40 C.F.R. §761.3.
7. Pursuant to 40 C.F.R. 761.3, PCB and PCBs mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

8. Pursuant to 40 C.F.R. 761.3, PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
9. Pursuant to 40 C.F.R. 761.3, PCB Article means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes but is not limited to transformers.
10. Pursuant to 40 C.F.R. 761.3, PCB Transformer means any transformer that contains  $\geq 500$  ppm PCBs.
11. On or about February 21, 2007, an inspection was conducted at Respondent's facility located at 3324 Chelsea Avenue in Memphis, Tennessee to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs.
12. The name of the Respondent's company at the time of the inspection was Penn Specialty Chemicals, Inc. On July 3, 2008, the name was changed to Penn A Kem, LLC.
13. At the time of the inspection, Respondent possessed a Westinghouse transformer, serial number PBV23107, which contained 324 gallons of fluid with a PCB concentration greater than 500,000 ppm. This PCB Transformer was located within a fenced area referred to as the Hydro Substation. The Hydro Substation fence had two gates that allowed access to the PCB Transformer.
14. Pursuant to 40 C.F.R. § 761.40(j), means of access to locations where PCB Transformers are in use shall be marked with a large PCB mark as illustrated in 40 C.F.R. § 761.45(a). Respondent failed to mark with a large PCB mark one of the gates allowing access to the PCB Transformer located at the Hydro Substation as required in 40 C.F.R. § 761.40(j).
15. At the time of the inspection, Respondent possessed a Westinghouse transformer, serial number YDR7831, which contained 320 gallons of fluid with a PCB concentration

greater than 500,000 ppm. This PCB Transformer was located within a fenced area referred to as the PMEG1. This fenced area had two gates that allowed access to the PCB Transformer.

16. Pursuant to 40 C.F.R. § 761.40(j), means of access to locations where PCB Transformers are in use shall be marked with a large PCB mark as illustrated in 40 C.F.R. § 761.45(a). Respondent failed to mark with a large PCB mark either of the two gates allowing access to the PCB Transformer located at the PMEG1 area as required in 40 C.F.R. § 761.40(j).

#### **IV. Consent Agreement**

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
18. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
19. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of Section 6(e) of TSCA.
21. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

22. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

**V. Terms of Settlement**

23. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), the nature of the alleged violation, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **FOUR THOUSAND THREE HUNDRED EIGHT FIVE Dollars (\$4,385)**.
24. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty as cited in the foregoing paragraph and to the performance of the SEP set forth herein.
25. Respondent shall complete the following Pollution Prevention SEP, which the parties agree is intended to secure significant environmental or public health protection.
- a. By December 31, 2009, the Respondent shall remove from use and appropriately dispose at least one PCB Transformer in its possession, and
  - b. By December 31, 2009, the Respondent shall replace, if necessary, all PCB Transformers removed and disposed of pursuant to this SEP with transformers that do not contain PCBs.
26. The total expenditure for the SEP shall not be less than **FIFTY NINE THOUSAND EIGHT HUNDRED Dollars (\$59,800)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein.

27. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after the completion of the SEP. The SEP Completion Report shall contain the following information:
- a. a detailed description of the SEP as implemented;
  - b. an affidavit from an authorized company official attesting that the SEP has been completed or explaining in detail any failure to complete;
  - c. copies of all annual records and reports required by 40 C.F.R. Part 761, including manifests concerning transportation and disposal of PCBs;
  - d. copies of relevant records documenting expenditures associated with the SEP including, but not limited to work orders, scope(s) of work, bills, payment records, and copies of checks; and
  - e. an inventory of all PCB Items in the possession of the Respondent at the conclusion of the SEP.
28. Respondent agrees that failure to submit the SEP Completion Report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 31 below.
29. Respondent shall submit all reports required by this CAFO by first class mail or overnight delivery service to the following:
- Keith Bates  
PCB and Chemical Products  
Management Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960
30. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

31. Respondent agrees that failure to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraphs 25 and 26 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below.
- a. Except as provided in subparagraph (b) immediately below, in the event that Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of **FIFTY NINE THOUSAND EIGHT HUNDRED Dollars (\$59,800)** for the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between **FIFTY NINE THOUSAND EIGHT HUNDRED Dollars (\$59,800)** and the amount actually spent.
  - b. If the SEP is not fully and timely completed, but the Complainant determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
  - c. If the SEP is fully and timely completed, and Respondent expended at least 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall not be liable for any stipulated penalty.
  - d. For failure to timely submit a SEP Completion Report required by Paragraph 27 above, Respondent shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100) for each day the report is late.



- e. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
  - f. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 36 and 37 below.
32. Respondent certifies that, as of the date this CAFO is signed, Respondent is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
33. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
34. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 6(e) of TSCA, 15 U.S.C. § 2605."

#### **VI. Final Order**

35. Respondent is assessed a civil penalty of **FOUR THOUSAND THREE HUNDRED EIGHT FIVE Dollars (\$4,385)** which shall be paid within 30 days from the effective date of this CAFO.
36. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

**The check shall reference on its face the name of the  
Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101.

Contact: Natalie Pearson (314) 418-4087

37. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Keith Bates  
PCB and Chemical Products  
Management Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

38. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

39. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
40. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
41. This CAFO shall be binding upon the Respondent, its successors and assigns.
42. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

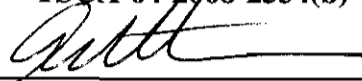
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**VII. Effective Date**

43. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**


**Respondent:** Penn A Kem, LLC  
**Docket No.:** TSCA-04-2008-2534(b)

By:  (Signature) Date: 8/15/08

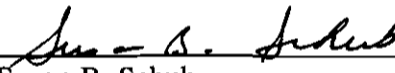
Name: Andrew J. Nitiss (Typed or Printed)

Title: Env Health & Safety Mgr (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 8/25/08  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 27<sup>th</sup> day of August, 2008.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Penn A Kem, LLC, Docket No. TSCA-04-2008-2534(b), to the addressees listed below.

Ms. Tanya Henderson  
Environmental Engineer  
Penn A Kem, LLC  
3324 Chelsea Avenue  
Memphis, TN 38108

(via Certified Mail, Return Receipt Requested)

Keith Bates  
PCB and Chemical Products  
Management Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

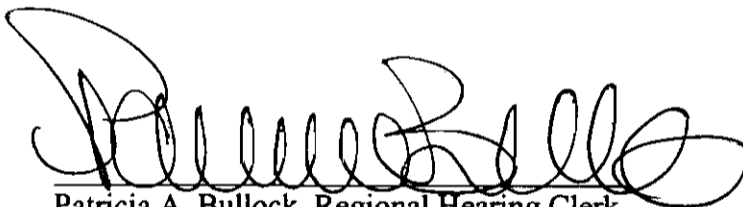
(via EPA's internal mail)

Robert Caplan, Attorney  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

(via EPA's internal mail)

Date:

8-28-08



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/27/08  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

- |   |  |
|---|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USA O COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS       | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                       | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                               | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|   | <input type="checkbox"/> This is a modification  |

PAYEE: Penn A Kem  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4385-  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2008 2534(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |