

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4007(b)
)	
Chemical Products Corporation)	Proceeding under Section 3008(a)
102 Old Mill Road)	of the Resource Conservation and
Cartersville, GA 30120)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: GAD 003 275 468)	
)	
Respondent.)	

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HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270; and the Georgia Hazardous Waste Management Act (GHWMA), § 12-8-60 through § 12-8-83, of the Official Code of Georgia Annotated (OCGA) and regulations promulgated pursuant thereto and set forth in the Georgia Hazardous Waste Management Rules (GHWMR) at Chapter 391-3-11 of the Georgia Department of Natural Resources Rules.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 CFR Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO) 40 CFR §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 CFR § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Chemical Products Corporation (CPC), a corporation incorporated and doing business in the State of Georgia and located at 102 Old Mill Road, Cartersville, Georgia 30120.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 21, 1984, the State of Georgia (the State) received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in the GHWMA, § 12-8-60, through § 12-8-83, and regulations set forth at Chapter 391-3-11 of the GHWMR. For purposes of this Order, citations herein to the requirements of RCRA shall constitute a citation to the equivalent requirements of the GHWMA and citations herein to the requirements of 40 CFR Parts 124 and 260 through 268 and Part 270 shall constitute a citation to the equivalent requirements of the GHWMR. The use of the 40 CFR citations is also appropriate since the GHWMR incorporated by reference the requirements of 40 CFR Parts 124 and 260 through 268 and Part 270.
7. Although EPA has granted the State of Georgia authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State of Georgia.
8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Georgia before issuance of this CA/FO.
9. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 903(15), and 40 CFR § 260.10 (Section 391-3-11-.02 of the GHWMR).
10. Respondent is the "owner" and "operator" of a "facility" located at 102 Old Mill Road, Cartersville, Georgia, as those terms are defined in 40 CFR § 260.10 (Section 391-3-11-.02 of the GHWMR).
11. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and Section 12-8-66 of the GHWMA authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for these requirements are found in 40 CFR Part 262 (Section 391-3-11-.08 of the GHWMR).
12. Section 3004 of RCRA, 42 U.S.C. § 6924 and Section 12-8-66 of the GHWMA set forth the requirement for standards applicable to owners and operators of hazardous waste

treatment, storage, and disposal facilities. The implementing regulations for this requirement are found in 40 CFR Part 264 (Section 391-3-11-.05 of the GHWMR).

13. Section 3005 of RCRA, 42 U.S.C. § 6925 and Section 12-8-66 of the GHWMA set forth the requirement for having interim status or a permit for the treatment, storage or disposal of hazardous waste. The implementing regulations for this requirement are found in 40 CFR Parts 124 and 270 (Section 391-3-11-.11 of the GHWMR).
14. Pursuant to 40 CFR § 260.10 (Section 391-3-11-.02 of the GHWMR), a “generator” is any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to be subject to regulation.
15. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. These standards include establishing financial responsibility as may be necessary. Pursuant to that provision, EPA promulgated 40 CFR parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The regulations became effective on May 19, 1980.
16. Pursuant to 40 CFR § 264.143 (Section 391-3-11-.05 of the GHWMR) the owner or operator of each facility must establish financial assurance for closure of the facility.
17. Pursuant to 40 CFR § 264.142 (Section 391-3-11-.05 of the GHWMR), the owner or operator of a facility required under 40 CFR §§ 264.228 and 264.258 to prepare a contingent closure plan, must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115, and applicable closure requirements in 40 CFR §§ 264.178, 264.258, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102.
18. Pursuant to 40 CFR § 264.143(f) [Section 391-3-11-.05 of the GHWMR], the owner or operator who uses the financial test for financial assurance must send updated financial information to the Regional Administrator/EPD Director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 40 CFR § 264.143(f)(3) which consist of: the chief financial officer’s letter, the independent certified public accountant's report on financial statements of the latest completed fiscal year, and the independent certified public accountant’s report that the CFO data doesn’t need adjustment.
19. Pursuant to 40 CFR § 264.147(a) [Section 391-3-11-.05 of the GHWMR], the owner or operator must maintain sudden liability coverage for the facility of at least \$1,000,000 for each occurrence and \$2,000,000 annual aggregate coverage.

IV. EPA ALLEGATIONS AND DETERMINATIONS

20. Historically, Respondent operated its facility as a treatment, storage, and disposal facility and a large quantity generator of hazardous waste.
21. On September 26, 1985, GA EPD issued Permit No. HW-026(T) to Respondent. On September 26, 1995, GA EPD issued Permit No. HW-026(T)-1. On September 26, 2005, GA EPD issued Permit No. HW-026(T)-2.
22. For the years 2002 through 2005, Respondent's fiscal year ended on October 31 of each year.
23. On February 17, 2006, EPA conducted a financial responsibility inspection at the GA EPD office located in Atlanta, Georgia and found the violations of RCRA at CPC's facility listed in paragraphs 24-26 below.
24. On March 15, 2005, Respondent submitted a closure cost estimate of **\$221,870**, which did not equal the **\$329,032**, current dollar cost of closing its facility as determined by EPA and did not include a sufficiently detailed cost estimate. Therefore, Respondent is in violation of 40 CFR § 264.142(a), Section 391-3-11-.05 of the GHWMR, and its Permit No. HW-026(T)-2.
25. Respondent failed to timely submit its annual financial test (FT) submittals within 90 days after the close of its fiscal year for the years 2003 through 2006, as required by 40 CFR § 264.143(f)(5), and Section 391-3-11-.05 of the GHWMR. Therefore, Respondent is in violation of 40 CFR § 264.143(f), Section 391-3-11-.05 of the GHWMR, and its Permit No. HW-026(T)-2.
26. During the period from 2003 through May 31, 2007, Respondent did not demonstrate financial responsibility for sudden accidental occurrences at its facility. Therefore, Respondent is in violation of 40 CFR § 264.147(a), Section 391-3-11-.05 of the GHWMR, and its Permit No. HW-026(T)-2.
27. Respondent has corrected the violation cited in paragraph number 26. On July 18, 2007, Respondent provided a certificate showing pollution liability insurance coverage for the period of 2003 through 2007.

V. TERMS OF AGREEMENT

Based on the foregoing Allegations and Determinations, the parties agree to the following:

28. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
29. The Respondent neither admits nor denies the factual allegations set out above.

30. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
31. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
32. Respondent waives any right it may have pursuant to 40 CFR § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
33. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
34. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
35. Each party will pay its own costs and attorney's fees.

INJUNCTIVE RELIEF

36. Within 45 calendar days of the effective date of this CA/FO, as required by 40 CFR § 264.142 (Section 391-3-11-.05 of the GHWMR), and its Permit No. HW-026(T)-2, Respondent must provide EPA and GA EPD with financial assurance and a detailed written cost estimate in current dollars, covering the cost of closing its facility's RCRA hazardous waste management units.
37. EPA will review and comment on the adequacy of this cost estimate in writing. Respondent shall incorporate any EPA comments and resubmit its revised cost estimate to EPA within 30 days of receipt of EPA's comments. Should Respondent fail to revise its cost estimate in accordance with EPA's comments within 30 days, Respondent shall be in violation of this CA/FO.

PAYMENT OF CIVIL PENALTY

38. Respondent consents to the payment of a civil penalty in the amount of SEVEN THOUSAND DOLLARS (\$7,000) within 30 calendar days of the effective date of this CA/FO.

39. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, Pennsylvania 15251-7099

Respondent shall submit a copy of the payment to the following addressees:

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

and to:

Larry L. Lamberth, Acting Chief
South Enforcement & Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

40. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) **Interest**. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c).
 - (b) **Monthly Handling Charge**. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
 - (c) **Non-Payment Penalty**. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per

annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

41. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

VI. RESERVATION OF RIGHTS

42. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in this CA/FO.
43. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
44. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
45. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. PARTIES BOUND

46. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
47. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
48. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. SERVICE OF DOCUMENTS

49. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Catherine Winokur,
Associate Regional Counsel
OEA – 13th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9569

50. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

Mr. Terrence Frawley,
Chief Financial Officer
Chemical Products Corporation
102 Old Mill Road
Cartersville, GA 30120

IX. SEVERABILITY

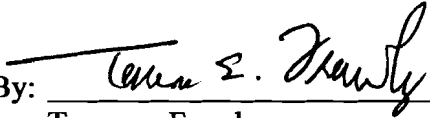
51. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

X. EFFECTIVE DATE

52. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

Chemical Products Corporation

By: 
Terrence Frawley
Chief Financial Officer

Dated: 8/23/07

U.S. Environmental Protection Agency

By: 
Narindar Kumar, Chief
RCRA & OPA Enforcement & Compliance Branch
RCRA Division

Dated: 8/28/07

In the Matter of Chemical Products Corporation
Docket Number: RCRA-04-2007-4007(b)

CERTIFICATE OF SERVICE

I hereby certify that on SEP 05 2007, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Chemical Products Corporation, Docket Number: RCRA-04-2007-4007(b), and that on SEP 05 2007 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

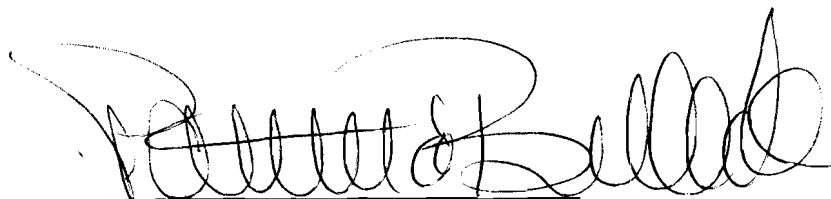
Catherine Winokur
Associate Regional Counsel

(Via EPA's internal mail)

U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. Terrence Frawley
Chief Financial Officer
Chemical Products Corporation
P.O.Box 2470
Cartersville, GA 30120

(Via Certified Mail- Return Receipt Requested)



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

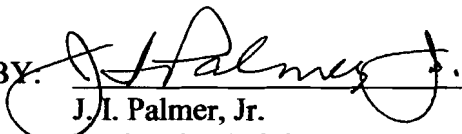
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2007-4007(b)
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Chemical Products Corporation)	Proceeding under Section 3008(a)
102 Old Mill Road)	of the Resource Conservation and
Cartersville, GA 30120)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: GAD 003 275 468)	
)	
Respondent.)	
<hr/>)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 CFR Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 31ST day of August, 2007.

BY: 
J.I. Palmer, Jr.
Regional Administrator
EPA Region 4

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: PARVEZ MALLICK on 9/6/07
(Name) (Date)

in the RCRA DIV / ROECB / South Ent. & Comp. Section at (404) 562-8594
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Chemical Products Corporation
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: RCRA-04-2007-4007(b) Date Filed
9/5/2007

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238.

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
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 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) |