



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 09 2019

**CERTIFIED MAIL RETURN RECEIPT**

Karen Aldridge Crawford  
Nelson Mullins  
Meridian | 17th Floor  
1320 Main Street  
Columbia, South Carolina 29201

SUBJ: Milliken Chemical-Dewey Plant  
Consent Agreement and Final Order, Docket No. RCRA-04-2019-4005(b)

Dear Ms. Crawford:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-referenced matter. Please note that payment of the civil penalty is due within 30 days of the effective date of the CA/FO, which is the date of the CA/FO is filed with the Regional Hearing Clerk. A copy of the penalty payment must be mailed to the Regional Hearing Clerk and to the Program Staff, as referenced in the CA/FO. The timing of all the other obligations required by the CA/FO also begin on the effective date of the CA/FO.

Thank you for your assistance in resolving this matter. If you have any questions, please feel free to contact me at (404) 562-8590 or Héctor M. Danois at (404) 562-8556 or by email at [danois.hector@epa.gov](mailto:danois.hector@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division

Enclosure

cc: Roberto X. Busó

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2019-4005(b)
	)	
Milliken & Company	)	
Milliken Chemical-Dewey Plant	)	
1440 Campton Road	)	Proceeding Under Section 3008(a) of the
Inman, South Carolina 29349-0817	)	Resource Conservation and Recovery Act,
	)	42 U.S.C. § 6928(a)
EPA ID No.: SCD 069 314 045	)	
	)	
Respondent	)	
_____	)	

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RECEIVED  
OFFICE OF REGIONAL COUNCIL

**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), ordering compliance with the requirements of the South Carolina Hazardous Waste Management Act (SCHWMA), S.C. Code Ann. § 44-56-10 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at the South Carolina Hazardous Waste Management Regulations (SCHWMR) 25 S.C. Code Ann. Regs. 61-79.260-270 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 44-56-60(a)(2) and (b) of the SCHWMA, SC. Code Ann. § 44-56-60(a)(2) and (b) [Section 3005 of RCRA, 42 U.S.C. § 6925] and 25 S.C. Code Ann. Regs. 61-79.260-270, [40 C.F.R. Parts 260 through 270].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. 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 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 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, Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Milliken & Company (Milliken or Respondent), a corporation organized under the laws of the State of Delaware, doing business in the State of South Carolina (State). Respondent is the owner and operator of the Milliken Chemical-Dewey Plant (Facility), a chemical manufacturing facility located at 1440 Campton Road, Inman, South Carolina 29349.

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at SCHWMA, S.C. Code Ann. § 44-56-10 *et seq.* and SCHWMR 25 S.C. Code Ann. Regs. 61-79.260-270.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the 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). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. 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 before issuance of this CA/FO.
11. Sections 44-56-30 and 44-56-35 of the SCHWMA, S.C. Code Ann. § 44-56-30 and 44-56-35 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 25 S.C. Code Ann. Regs. 61-79 Part 262. [40 C.F.R. Part 262].
12. Section 44-56-60(a)(2) and (b) of the SCHWMA, S.C. Code Ann. § 44-56-60(a)(2) and (b) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 25 S.C. Code Ann. Regs. 61-79 Part 264 (permitted)

and 25 S.C. Code Ann. Regs. 61-79 Part 265 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 25 S.C. Code Ann. Regs. 61-79.261.2 [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A “discarded material” includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 25 S.C. Code Ann. Regs. 61-79.261.3 [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 25 S.C. Code Ann. Regs. 61-79.261.3(a)(2) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 25 S.C. Code Ann. Regs. 61-79.261.4(b) [40 C.F.R. § 261.4(b)].
15. Pursuant to 25 S.C. Code Ann. Regs. 61-79.261.3(a)(2)(i) and 61-79.261.20 [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 25 S.C. Code Ann. Regs. 61-79.261.21-24 [40 C.F.R. §§ 261.21-24] are “characteristic hazardous wastes” and are provided with the EPA Hazardous Waste Numbers D001 through D043. This includes solid wastes which exhibit the characteristic of ignitability, which are identified with the EPA Hazardous Waste Number D001 (25 S.C. Code Ann. Regs. 61-79.261.20 and 61-79.261.21 [40 C.F.R. §§ 261.20 and 261.21]).
16. Pursuant to 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
17. Pursuant to 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 25 S.C. Code Ann. Regs. 61-79 Part 261 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
19. Pursuant to 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], a “person” includes a corporation.
20. Pursuant to 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], “storage” is “the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.”
21. Pursuant to S.C. Code Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 25 S.C. Code Ann. Regs. 61-79.261.2 [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in S.C. Code Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11].

#### IV. EPA ALLEGATIONS AND DETERMINATIONS

22. Respondent is a “person” as defined in 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10].
23. Respondent is the “owner/operator” of “facility” located at 1440 Campton Road, Inman, South Carolina, as those terms are defined in 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10].
24. Respondent is a “generator” of “hazardous waste” as those terms are defined in 25 S.C. Code Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10] and 25 S.C. Code Ann. Regs. 61-79.261.3 [40 C.F.R. § 261.3].
25. On September 29, 2009, the South Carolina Department of Health and Environmental Control (DHEC) issued Hazardous Waste Permit Number SCD069314045 to Respondent, authorizing Respondent to store of up to 112 fifty-five (55) gallon containers of hazardous waste in an area of the Facility identified as the “Waste Storage Pad.”
26. On July 10 and September 26, 2017, the EPA and DHEC conducted a compliance evaluation inspection (CEI) and a compliance development investigation evaluation (CDIE), respectively, at the Facility. EPA’s findings of the CEI and CDIE were documented in a Report mailed to Respondent, dated April 19, 2018.
27. Following receipt of the CEI and CDIE by Milliken, EPA and Milliken conducted several conference calls and an in-person meeting to discuss Milliken’s investigation into the alleged findings set out in the closing conference for the compliance evaluation, the CEI and the CDIE.
28. During the July 10, 2017, CEI, the EPA observed Respondent was storing numerous containers of material, at various stages of processing, at the Facility’s Flame Pad Area and Outdoor Storage Area, located adjacent to the Waste Storage Pad, the permitted hazardous waste storage area, some for over a year, without making a hazardous waste determination on these wastes.
29. The EPA therefore alleges Respondent violated S.C. Code Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11], by failing to make an accurate hazardous waste determination on the waste stored for more than a year at the Facility’s Flame Pad Area and Outdoor Storage Area, without either returning these wastes to the process, recycling or selling as a product.
30. Following the inspection, based on the EPA’s contentions and questions, Milliken contended that it characterized all the materials in question and managed them in a compliant manner.
31. In the regular course of its operations at the Facility, Respondent generates various spent tetramer solid waste streams. Based on the information collected from Respondent, Respondent failed to make hazardous waste determinations on these wastes between March 2015 and September 2017.
32. The EPA therefore alleges Respondent violated S.C. Code Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11], by failing to make an accurate hazardous waste determination on spent tetramer solid waste streams generated at the Facility between March 2015 and September 2017.

33. On September 13, 2018, Milliken submitted its written investigative findings and positions with respect to EPA's findings and allegations set forth in the CEI and CDIE and followed up with several supplemental submittals as information developed or as EPA requested additional information.
34. Following the inspection, based on the EPA's contentions and questions, Milliken contended it implemented a re-characterization study to accurately characterize the spent tetramer solid waste stream and addressed its management of the spent tetramer solid waste stream to ensure compliance with applicable federal and state law and regulations.

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations and applicable to this enforcement action and settlement process only, the parties agree to the following:

35. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
36. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO and this CA/FO may not be used as an admission or finding of fact or law in any proceeding by any party other than EPA in enforcing obligations set forth in this CA/FO or in actions expressly set forth in this CA/FO.
37. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
38. 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, 44 U.S.C. § 3501 *et seq.*
39. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
40. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
41. The parties agree that the settlement of this matter is in the public interest, preserves judicial and administrative resources and that this CA/FO is consistent with the applicable requirements of RCRA.
42. Respondent, by signing this CA/FO, certifies to the best of its knowledge that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.

43. Respondent consents to the conditions specified in, and the issuance of, this compliance Consent Agreement and accompanying Final Order.
44. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
45. Each party will pay its own costs and attorneys' fees.
46. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

## **VI. WORK TO BE PERFORMED**

47. As a condition of settlement, Respondent agrees to certify performance of the following measures:
  - a. No later than sixty (60) days after the effective date this CA/FO, Respondent shall develop and submit to the EPA, with a copy to the DHEC, a plan that describes the procedures implemented at the Facility, pursuant to 25 S.C. Code Ann. Regs. 61-79.262.12(a) [40 C.F.R. 262.11], to make accurate hazardous waste determinations on waste tetramers at the point of generation ("Tetramer HW Determination Plan"). At a minimum, the Tetramer HW Determination Plan shall include the following:
    - i. A detailed description of the sampling procedures for the waste tetramer.
    - ii. A detailed description of the frequency for which waste tetramer samples will be collected.
    - iii. A piping and instrumentation diagram of the units (pipes, tanks, etc.) that will handle the waste tetramer.
    - iv. A description of locations where samples of waste tetramer will be collected.
    - v. A list of the hazardous characteristics for which each sample of waste tetramer will be analyzed.
    - vi. A list of test methods (see, 25 S.C. Code Ann. Regs. 61-79.261 [Subpart C of 40 CFR Part 261]) that will be utilized to determine the characteristics of the waste.
    - vii. A description of record keeping procedures followed during the waste tetramer sampling events.
    - viii. A Quality Assurance Project Plan (QAPP). The QAPP shall follow current EPA sampling, analysis, quality control, quality assurance and data validation methods and procedures. The EPA standard operating procedures and quality assurance methods are found in the Science and Ecosystem Support Division's (SESD's) Field Branches Quality System and Technical Procedures (FBQSTP). The FBQSTP can be found at:

<http://www.epa.gov/region4/sesd/fbqstp/index.html>. Additional information related to Quality Assurance Project Plans (QAPPs) can be found at:  
[http://www.epa.gov/quality/qa\\_docs.html](http://www.epa.gov/quality/qa_docs.html).

- ix. The roles and responsibilities of all employees and contractor personnel assigned to implement the Tetramer HW Determination Plan.
  - x. A statement that the Tetramer HW Determination Plan shall be reviewed and updated annually, or as other factors may cause more frequent updates to be required.
  - xi. A method to document the volume and final disposition of all waste tetramer.
  - xii. A tracking system to document all aspects of the Tetramer HW Determination Plan.
  - xiii. A statement that waste tetramer will be properly managed according to applicable hazardous waste management regulations.
- b. No later than one (1) year after the effective date of this CA/FO, Respondent shall submit to the EPA, with a copy to the DHEC, a certification that Respondent has completed the construction and installation of a day tank and associated equipment necessary to accumulate and manage any waste tetramer material likely to exhibit the characteristic of ignitability and potentially be a D001 hazardous waste. The day tank shall allow the Respondent to segregate all potentially hazardous waste generated by the process, and shall be compliant with all RCRA requirements including, but not limited to, 25 S.C. Code Ann. Regs. 61-79 Part 265, Subpart J [40 C.F.R. Part 265, Subpart J].
- c. No later than one (1) year after the effective date of this CA/FO, Respondent shall submit to the EPA, with a copy to the DHEC, a certification that it has completed the construction of upgrades to the existing non-hazardous tetramer fuel storage tank and associated equipment by installing tank level/leak detection instrumentation and controls (along with associated automation and alarms), rebuilding and upgrading existing containment around this tank to add impervious coating of all containment structure surfaces serving the tetramer fuel storage tank, and enhancing inspection and maintenance of the storage tank and associated equipment and piping.
- d. No later than sixty (60) days after the effective date this CA/FO, Respondent shall submit to the EPA, with a copy to the DHEC, a Best Management Procedures Plan (BMP Plan) that describes the procedures which the Respondent has implemented to manage material for which a decision has been made not to return to the process, reuse, recycle or sell as a product (waste or off-specification material) that would be a hazardous waste when determined to be a solid waste. At a minimum, the BMP Plan to manage off-specification material shall include the following:
- i. An inventory program to track the type of off-specification material, volume of off-specification material, date of generation of the off-specification material, waste determination and characterization of the off-specification material, and ultimate disposition and management of the off-specification material.



1. For any off-specification material deemed to be a product, the BMP Plan should document in the inventory log the basis of the product determination; and,
  2. For any off-specification material deemed to be a waste, the BMP Plan must require the hazardous waste to be managed and disposed of in accordance with the applicable hazardous waste regulations.
- ii. A requirement that all off-specification material be added to the inventory program the day which they are generated.
  - iii. A requirement to conduct a regular inventory of the off-specification materials stored on-site and evaluate each off-specification material to determine whether it is a waste.
  - iv. A requirement to store all off-specification material in a manner that will prevent the release of the off-specification material to environment.
  - v. A requirement to document a current or future (less than one year) potential market for the off-specification material during the inventory.
48. In all instances in which this CA/FO requires written submission to the EPA, each submission must be signed by a responsible corporate officer and include the following certification:

“I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge and belief the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

## VII. PAYMENT OF CIVIL PENALTY

49. Respondent consents to the payment of a civil penalty in the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.

50. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

51. Respondent shall submit a copy of the payment to the following individuals:

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

and to:

Héctor M. Danois  
Environmental Engineer  
Industrial Compliance Assistance Section  
Compliance Assistance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

52. If Respondent fails to remit the civil penalty as agreed to herein, the 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 thirty (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 or stipulated 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 C.F.R. § 102.13(c).
  - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
  - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 31 U.S.C. § 3717(e)(2). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

53. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

#### VIII. PARTIES BOUND

54. This CA/FO shall be binding on 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.

55. 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.
56. 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.

#### **IX. RESERVATION OF RIGHTS**

57. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
58. 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.
59. 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 storage, 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.
60. No action or decision by the EPA pursuant to this CA/FO, including without limitation, decisions of the Regional Administrator, the Director of the ECA Division, or any authorized representative of the EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this CA/FO, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this CA/FO.
61. In any action brought by the EPA for a violation of this CA/FO, Respondent shall bear the burden of proving any defenses, including that the EPA's actions were arbitrary and capricious and not in accordance with law.
62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, including the collection of a penalty, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter, except for matters alleged and resolved in this CA/FO.

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

#### **X. OTHER APPLICABLE LAWS**

64. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XI. SERVICE OF DOCUMENTS**

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

Roberto X. Busó  
Associate Regional Counsel  
RCRA/FIFRA/TSCA Law Office  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

Karen Aldridge Crawford  
Nelson Mullins  
Meridian | 17th Floor  
1320 Main Street  
Columbia, South Carolina 29201

#### **XII. SEVERABILITY**

67. 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.

#### **XIII. MODIFICATION**

68. This CA/FO may only be modified by mutual agreement of the EPA and Respondent and subject to the approval of the Regional Judicial Officer. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date the date on which they are filed with the Regional Hearing Clerk, and shall be incorporated into this CA/FO and attached as an appendix.

69. Any requests for modification of a compliance date contained in this CA/FO, or for a modification of an approved requirement, must be made in writing. Such requests must be timely and provide justification for any proposed compliance date or approved requirement modification. The EPA has no obligation to approve such requests, but if it does so, such approval must be in writing.

#### XIV. EFFECTIVE DATE

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

*In the matter of Milliken Chemical Dewey Plant., Docket No. RCRA-04-2019-4005(b):*

#### AGREED AND CONSENTED TO:

**For: Milliken & Company**


By:   
(signature)

Dated: 6/12/2019

Printed Name: John D. Kellam

Title: VP of Manufacturing, Chemical Division

**For: United States Environmental Protection Agency**

By:   
Larry L. Lamberth  
Chief, Chemical Safety  
and Land Enforcement Branch

Dated: 07/01/19

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2019-4005(b)  
)  
Milliken & Company )  
Milliken Chemical-Dewey Plant )  
1440 Campton Road ) Proceeding Under Section 3008(a) of the  
Inman, South Carolina 29349-0817 ) Resource Conservation and Recovery Act,  
) 42 U.S.C. § 6928(a)  
EPA ID No.: SCD 069 314 045 )  
)  
Respondent )  
)

**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 C.F.R. 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 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 9<sup>th</sup> day of July, 2019.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the matter of Milliken Chemical-Dewey Plant, Docket Number: RCRA-04-2019-4005(b), and have served the parties listed below in the manner indicated:

Quantindra Smith  
Targeting, Data and Measures Office  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
[smith.quantindra@epa.gov](mailto:smith.quantindra@epa.gov)

(Via EPA's electronic mail)

Héctor M. Danois  
Environmental Engineer  
Industrial Compliance Assistance Section  
Compliance Assistance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
[danois.hector@epa.gov](mailto:danois.hector@epa.gov)

(Via EPA's electronic mail)

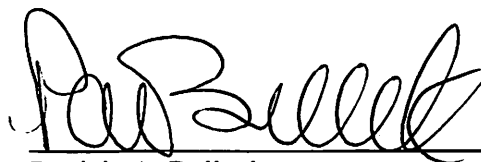
Roberto X. Busó  
Associate Regional Counsel  
RCRA/FIFRA/TSCA Law Office  
U.S. Environmental Protection Agency, Region 4  
[buso.roberto@epa.gov](mailto:buso.roberto@epa.gov)

(Via EPA's electronic mail)

Karen Aldridge Crawford  
Nelson Mullins  
Meridian | 17th Floor  
1320 Main Street  
Columbia, South Carolina 29201

(Via Certified Mail-Return Receipt Requested)

Date: 7-9-19



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511