UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:	)	
	)	
Harcros Chemicals Inc.	)	
5200 Speaker Road	)	
Kansas City, Kansas 66106	)	**Docket No. RCRA-07-2019-0251**
RCRA I.D. No. KST210010062	)	
Respondent	)	
	)	
Proceeding under Section 3008(a) and	)	
(g) of the Resource Conservation and	)	
Recovery Act as amended, 42 U.S.C. §	)	
6928(a) and (g)	)	
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 ("Complainant") and Harcros Chemical, Inc. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2).

EPA's ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. The State of Kansas is authorized to administer its own hazardous waste program in the State of Kansas pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Kansas has promulgated regulations that adopt by reference EPA's RCRA regulations (as of July 2006) and impose additional requirements. All references to federal regulations herein refer to the Kansas-authorized regulations, which adopt the July 2006 versions of the federal regulations. The authorized Kansas RCRA regulations operate in lieu of the Federal RCRA regulations in Kansas.

3. This Consent Agreement and Final Order serves as notice that the EPA alleges that Respondent violated Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and Kansas Statutes Annotated 65-3430, et al., and the Kansas Administrative Regulations (K.A.R.) which adopt the federal regulations (as of July 2006) by reference, including the standards for identification and listing of hazardous wastes (40 C.F.R. Part 261 and 262.11, as adopted by K.A.R. § 28-31-261 and 262); the standards applicable to generators of hazardous waste for offsite disposal, 40 C.F.R. Part 262, as adopted by K.A.R. 28-31-262); and the applicable standards for treatment, storage and/or disposal of hazardous waste (40 C.F.R. Part 265, as adopted by K.A.R. § 28-31-265).

Parties

4. Complainant is the Division Director of the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated from the Regional Administrator and Administrator of EPA.

5. The Respondent is Harcros Chemicals Inc., a Kansas corporation in good standing, and authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

6. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

7. In the case of a violation of an authorized state hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order to enforce the authorized state RCRA program. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

8. RCRA provides guidelines for a waste management program and provides EPA with the authorities found therein (Specifically, Sections 3001, 3002, 3005, and 3010 of RCRA, 42 U.S.C. §§ 6921, 6922, 6925, and 6930), to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, and as specifically applicable to this case, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 261, 262 and 265.

9. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

10. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

11. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), the regulations at 40 C.F.R. Part 270, and K.S.A. Section 65-3437, require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

12. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R 260.10, as adopted by K.A.R. 28-31-260, defines "person" as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

13. 40 C.F.R.§ 261.2, as adopted by K.A.R. 28-31-261, defines "solid waste" as any discarded material (unless excluded by 40 C.F.R.§ 261.4), which includes materials that are disposed of.

14. 40 C.F.R.§ 261.3, as adopted by K.A.R. 28-31-261, defines "hazardous waste."

15. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260, defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R Part 261 or whose act first causes a hazardous waste to become subject to regulation.

16. The requirements applicable to generators of hazardous waste are set forth at 40 C.F.R. Part 262, as adopted by K.A.R. 28-31-262. 40 C.F.R. § 262.20(a), as adopted by K.A.R. 28-31-262, requires that all offsite shipments of hazardous waste be accompanied by a hazardous waste manifest completed by the generator. Further, 40 C.F.R. § 262.20(b), as adopted by K.A.R. 28-31-262, requires that all hazardous waste manifest specify that the shipment of hazardous waste only be delivered to a permitted hazardous waste facility.

17. The requirements for a generator to determine whether a solid waste is a hazardous waste are set forth at 40 C.F.R. § 262.11, as adopted by K.A.R. 28-31-262. First, the generator must determine if the waste is excluded from regulation under 40 C.F.R. § 261.4, also set forth at K.A.R. 28-31-261. If the waste is not excluded, the generator must determine if the waste has been listed by EPA as a hazardous waste in Subpart D and the appendices of 40 C.F.R. part 261, some of which are incorporated by reference at K.A.R. 28-31-261, or whether the waste exhibits one of the hazardous characteristics of ignitability, reactivity, corrosivity, or toxicity, using the tests set forth in Subpart C of 40 C.F.R., Part 261, as incorporated at K.A.R. 28-31-261. Hazardous wastes are assigned waste code numbers.

18. 40 C.F.R. § 260.10 defines "small quantity generator." Kansas regulations adopted this definition with modification, at K.A.R. 28-31-260(c)(E) and 28-31-260(a)(8).

19. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260(a)(9), defines "large quantity generator" as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) per month of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) per month of acute hazardous waste (which are listed in 40 C.F.R. §§ 261.31 or 261.33(e)).

20. 40 C.F.R. § 262.34(a), as adopted by K.A.R. 28-31-262, allows that hazardous waste may be accumulated by a large or small quantity generator for a specified and limited amount of time without a permit or interim status for the storage of hazardous waste, provided that certain conditions are satisfied, including the requirement that containers of hazardous waste are labeled with the words "Hazardous Waste" (40 C.F.R. § 262.34(a)(3)), and such containers of hazardous waste are kept closed except when necessary to add or remove hazardous waste (40 C.F.R § 265.173).

21. 40 C.F.R. § 260.10 as adopted by K.A.R. 28-31-260, defines "disposal" as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

22. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260, defines "storage" as the "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere."

23. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260, defines "facility" to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

24. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260, defines "owner" as the person who owns a facility or part of a facility.

25. 40 C.F.R. § 260.10, as adopted by K.A.R. 28-31-260, defines "operator" as the person responsible for the overall operation of a facility.

26. 40 C.F.R. § 265.31, as adopted by K.A.R. 28-31-265, requires that facilities must be maintained and operated to minimize the possibility of a "sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

27. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of

any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

28. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than $25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $99,681 for violations that occur after November 2, 2015, and are assessed after February 6, 2019. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

EPA's Factual Allegations

29. As a corporation operating and authorized to conduct business within the State of Kansas, Respondent is a "person" as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. 260.10, as adopted by K.A.R. 28-31-260.

30. Since October 2001, Harcros has been an "owner" and "operator" of the portion of the facility at 5200 Speaker Road, Kansas City, Kansas ("facility") where hazardous waste is stored or treated within the meaning of 40 C.F.R. § 260.10, as incorporated by reference at K.A.R. 28-31-260. Respondent's facility includes a "hazardous waste facility" as that term is defined in K.S.A. 65-3430(f).

31. Harcros manufactures industrial chemicals, including surfactants, anti-foaming agents and emulsifiers. It also packages a number of chemicals, including surfactants and non-chlorinated solvents from bulk (storage tank, rail car or tank car) into drums or totes. Specific to this matter, Harcros produces various products called Catacarb that are manufactured utilizing a commercial chemical named vanadium pentoxide.

32. As a result of its various manufacturing operations, Respondent generates both "solid wastes" and "hazardous wastes," as these terms are defined by Section 1004 of RCRA, 42 U.S.C. § 6903, and 40 C.F.R. Part 261, and adopted by K.A.R. 28-31-261. Based on notifications by Respondent, during the last five years, described herein, Harcros alternatingly operated as a "small quantity generator," or a "large quantity generator," as defined at K.A.R. 28-31-260(a)(8) and (9).

33. In the summer of 2018, the U.S. Environmental Protection Agency Region 7 (EPA) was contacted by a Harcros employee regarding releases of vanadium pentoxide and worker exposure that occurred during the manufacture of "Catacarb" products at the facility. On September 20, 2018, the EPA issued Harcros a Request for Information pursuant to Section 3007

of RCRA, 42 U.S.C. § 6927, that required Harcros to provide information on the facility's past management practices for vanadium pentoxide. Harcros submitted responses to the Request for Information on November 23, 2018, and December 14, 2018. The EPA has reviewed the responses received from Harcros pursuant to the Request for Information, as well as other information related to the Harcros facility, to determine its compliance with the requirements of RCRA.

34. Review of the above-referenced information revealed that since the 1960s, under both prior ownership and that of Harcros, an outdoor production unit at the facility was used to produce Catacarb products and where vanadium pentoxide powder was as an input into the Catacarb production process. Discarded unused vanadium pentoxide is a listed hazardous waste (P120) at 40 C.F.R. § 261.33, and as adopted by K.A.R. 28-31-261. Catacarb products were made 10 to 15 times per year. Through August 2018 ("the period of violations"), the first step in the Catacarb manufacturing process was to use a forklift to raise either supersack bags or 55-gallon drums of vanadium pentoxide over a 5' x 5' hopper, and then to dump the vanadium pentoxide into the hopper. The second step in this process was to lift the hopper that was filled with vanadium pentoxide over a mixing tank, where it was emptied by opening a slide gate at the base of the hopper. In August 2018, Harcros began the use of a pneumatic system to transfer vanadium pentoxide from drums to the mixing tank.

35. During each batch of Catacarb production, the dumping of vanadium pentoxide into the hopper, and the dumping of vanadium pentoxide from the raised hopper into the mixing tank, caused quantities of waste vanadium pentoxide to be spilled and/or dispersed into the air and deposited on surfaces in the immediate area of the Catacarb production unit.

36. Following a batch of Catacarb production, containers contaminated with vanadium pentoxide residues (emptied supersacks, and drum liners) and spilled vanadium pentoxide wastes (P120) were placed in the facility's dumpsters, where these wastes were stored until taken offsite for disposal. Empty drums were managed separately, and in approximately January 2017, Respondent installed a "triple rinse" system to clean drums that had contained vanadium pentoxide. The facility's dumpster containers were not labeled with the words "hazardous waste" and were not kept closed, and thus failed to meet the condition for the accumulation of hazardous waste without a permit or interim status for storage, as set forth at 40 C.F.R. 262.34(a), as adopted by K.A.R. 28-31-262a. The vanadium pentoxide placed into the facility's dumpsters was ultimately shipped offsite for disposal.

37. Surfaces contaminated with discarded vanadium pentoxide hazardous waste (P120) that could not be cleaned by sweeping were hosed with water. Washdown water from the production area either flowed into the surface trench or into a drain within the diked area where the mixing tank is located (Tank Dike 1), and then flowed into the waste water system and to an equalization tank (EQ Tank), before it was discharged to the Wyandotte County, Kansas wastewater treatment facility.

38. Through at least August 2016, Respondent's production of Catacarb products in certain circumstances caused the "discard" and "disposal" of supersacks which had contained

vanadium pentoxide, which was a "commercial chemical product" prior to being discarded or disposed, and a "listed" hazardous waste (P120), as these terms are defined by 40 C.F.R. Part 260 and § 261.33, as adopted by K.A.R. 28-31-260 and 28-31-261. As an "acute" hazardous waste for toxicity, as identified at 40 C.F.R. §261.33(e), as adopted by K.A.R. 28-31-261, the generation of more than 1 kilogram per month of P120 hazardous waste or 100 kilograms per month of any container residue or contaminated soil or debris qualified Harcros as a "large quantity generator," as defined at 40 C.F.R. § 260.10, and adopted by K.A.R. 28-31-260a(a)(9).

39. During the period of violations, the accumulation of vanadium pentoxide hazardous waste (P120) and solid wastes contaminated by vanadium pentoxide wastes (P120) in dumpsters at the facility (drum liners, supersacks), constituted the "storage" of hazardous waste, as this term is defined by 40 C.F.R. § 260.10, and adopted by K.A.R. 28-31-261.

40. During the last five years, Respondent offered for transport both vanadium pentoxide hazardous waste (P120) and various solid wastes potentially containing vanadium pentoxide wastes (P120) from the facility (supersacks, drum liners, discarded sweepings, soils, debris, or PPE) without required hazardous waste manifests, as required by 40 C.F.R. § 262.20(a), as adopted by K.A.R. 28-31-262. Further, these vanadium pentoxide P120 wastes were shipped to facilities that were not permitted to receive hazardous wastes, as required by 40 C.F.R. § 262.20(b), as adopted by K.A.R. 28-31-262. The unmanifested P120 listed hazardous wastes that were transported for offsite disposal at lined Subtitle D facilities included, but were not limited to discarded vanadium pentoxide wastes, "supersack" containers and/or PPE-containing vanadium pentoxide residue.

41. During the last five years, Respondent failed to perform "hazardous waste determinations" for the supersacks or other materials potentially containing P120 vanadium pentoxide hazardous wastes residues.

Respondent's Violations, as alleged by EPA

42. Complainant hereby states and alleges that Respondent has violated RCRA and the federal and Kansas regulations promulgated and authorized thereunder, as follows:

Count 1:
Failure to conduct hazardous waste determination(s)

43. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 41 above, as if fully set forth herein.

44. Pursuant to 40 C.F.R. § 262.11, as adopted by K.A.R. 28-31-262, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2 and K.A.R. 28-31-260 and 261, must determine if that waste is a hazardous waste using methods prescribed in the regulations

45. Based on the information provided by Respondent and reviewed by EPA, during the period of violations, the solid waste streams contaminated with vanadium pentoxide wastes

(P120) that were generated by Respondent included, but were not limited, to the following:

(a) waste vanadium pentoxide (P120);
(b) drums, liners, and/or "supersacks" from Catacarb production;
(c) personal protective equipment worn by employees that worked on the Catacarb process; and
(d) sludges removed from the facility's equalization tank, which potentially contained vanadium pentoxide.

46. During the period of violations, Respondent failed to conduct hazardous waste determinations, or completed inadequate hazardous waste determinations, on any of the solid waste streams described in the immediately preceding paragraph, in violation of Sections 3001 and 3002 of RCRA, 42 U.S.C. §§ 6921 and 6922, and 40 C.F.R. 262.11, as adopted by K.A.R. 28-31-262.

Count 2:
Offsite disposal of P120 hazardous waste without required hazardous waste manifests to facilities not permitted to receive hazardous waste

47. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 41 above, as if fully set forth herein.

48. 40 C.F.R. § 262.20(a), as adopted by K.A.R. 28-31-262, requires that a generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, must prepare a hazardous waste manifest.

49. 40 C.F.R. § 262.20(b), as adopted by K.A.R. 28-31-262, requires that the required manifest designate a permitted facility for the offsite treatment, storage, or disposal of hazardous waste.

50. During the period of violations, Respondent offered for transport various vanadium pentoxide hazardous wastes (P120) and solid wastes contaminated by vanadium pentoxide waste (P120) from the facility for offsite disposal without the required hazardous waste manifests, and to facilities that were not permitted to receive hazardous wastes, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922, and 40 C.F.R. §§ 262.20(a) and (b), as adopted by K.A.R. 28-31-262.

Count 3:
Onsite storage of hazardous waste without a RCRA Permit or RCRA Interim Status and without compliance with RCRA generator accumulation standards and failure to minimize releases

51. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 41 above, as if fully set forth herein.

52. Section 3005 of RCRA, 42 U.S.C. § 6925, the regulations at 40 C.F.R. Part 270, and K.S.A. Section 65-3437, require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

53. During the period of violations, Respondent failed to meet the conditions for the accumulation of vanadium pentoxide (P120) hazardous waste without a permit or interim status for the storage of such hazardous waste, as set forth at 40 C.F.R. 262.34(a), as adopted by K.A.R. 28-31-262a, in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, and K.S.A. Section 65-3437.

54. 40 C.F.R. § 265.31, as adopted by K.A.R. 28-31-265, requires hazardous waste generators taking advantage of generator accumulation standards comply with 265.31 to minimize the possibility of a "sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

55. During the period of violations, Respondent did not maintain and operate hazardous waste units associated with managing the waste generated from the Catacarb process in a manner to minimize the possibility of a sudden or non-sudden release of vanadium pentoxide (P120) hazardous waste into the air, soil, or surface water, in violation of 40 C.F.R. § 265.31, as adopted by K.A.R. 28-31-265.

CONSENT AGREEMENT

56. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits the jurisdictional allegations set forth herein;
(b) neither admits nor denies the specific factual allegations stated herein;
(c) consents to the assessment of a civil penalty, as stated herein;
(d) consents to the issuance of any specified compliance or corrective action order;
(e) consents to any conditions specified herein;
(f) consents to any stated Permit Action;
(g) waives any right to contest the allegations set forth herein; and
(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

57. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein, performance of the compliance actions described below.

58. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

59. Respondent and EPA agree to conciliate this matter without the necessity of a

formal hearing and to bear their respective costs and attorneys' fees.

Supplemental Environmental Project

60. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements.

61. Respondent shall complete the following SEP: Respondent shall design, construct and implement a two-phase pollution reduction project to install an Isopropyl Alcohol (IPA) and surfactant distillation/recovery unit. The SEP is more fully described in Appendix A to this Consent Agreement and Final Order. Respondent shall continue to full implementation and maintenance of the project for a minimum of three (3) years following the SEP Completion Date. This SEP project is expected to reduce the generation of solid and/or hazardous wastes, discharges to water, and air emissions. The SEP shall cost at least Six Hundred Thousand Dollars ($600,000).

62. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

63. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Work Plan to EPA for review and comment (if EPA chooses), that provides the plans and specifications for the SEP described in Paragraph 61 and consistent with the details in Appendix A. The SEP Work Plan shall provide a schematic diagram that describes the installation of the SEP recovery unit. The SEP Work Plan shall also provide separate estimates of IPA/surfactant reductions by media (air, water and solid/hazardous waste streams). The SEP Work Plan shall present any revisions to the cost estimate to complete the SEP in Appendix A, if the revised estimate is less than $600,000. The SEP Work Plan shall specify the schedule for completion of the SEP, not to exceed twelve (12) months from the actual submittal date of the Report.

64. Within 60 days of completion of the SEP, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 82 below. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 68 below. The SEP Completion Report shall contain the following information:

(a) Detailed description of the SEP as implemented. Additional items may be specifically requested, such as: The description shall include but is not limited to the following itemized costs:

i. Invoices documenting the cost for materials purchased;

ii. Invoices documenting labor costs; etc.

iii. Invoices documenting costs for confirmation testing.

(b) Description of any problems encountered in implementation of the projects and the solution thereto;

(c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

(d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

65. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

66. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

67. The SEP Completion Report shall be submitted on or before the due date specified above to the person specified in Paragraph 82.

68. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

69. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order 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 to enforce federal laws.

70. Within thirty (30) days after the 1st anniversary of the startup of the SEP, Respondent shall submit a SEP Annual Report that will document that amount of IPA and surfactant recovered by the SEP, and a comparison of the estimated pollutant reductions provided in the SEP Completion Report to the actual environmental benefits achieved by the SEP.

71. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

(a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least $600,000;

(b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

(c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;

(d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

(e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

(f) That 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; and

(g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 61.

72. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

(a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP

described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of $201,637, minus any documented expenditures determined by EPA to be acceptable for the SEP.

ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.

iii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of $250 for each day after the report was originally due until the report is submitted.

iv. For failure to submit the SEP Annual Report, Respondent shall pay a stipulated penalty in the amount of $100 for each day after the report was originally due until the report is submitted

(b) The determinations 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.

(c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.

(d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 76 herein.

(e) Nothing in this agreement 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

(f) The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Penalty Payment

73. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of $139,745, as set forth below.

74. Respondent shall pay the penalty within thirty (30) days of the Effective Date of the Final Order. Such payment shall identify Respondent / Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

75. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Howard Bunch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

76. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

77. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

Hazardous waste determination and vanadium pentoxide waste management

78. Harcros has an existing corporate Standard Operating Procedure that requires the proper characterization of waste at its point of generation. It includes provisions that individual Harcros manufacturing locations make hazardous waste determinations for specific manufacturing processes, such as the Catacarb process. Within 30 days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit, in accordance with Paragraphs 79 and 80 below, hazardous waste determinations for the Kansas City facility for each solid waste stream potentially containing vanadium pentoxide from the Catacarb production. This includes but is not limited to, contaminated containers, media and/or sludges removed from the facility's stormwater/wastewater system. These hazardous waste determinations will not include waste determinations for other contaminated media or wastes that could be generated currently or in the future as part of remedial activities at the site including the 1990 RCRA corrective action order, Administrative Order on Consent Docket No. VII-90-H-0028 (1990) and the amendments thereto. Characterization of those remedial waste streams will be performed as part of the remedial orders using data and information specific to each individual remedial waste stream.

79. These hazardous waste determinations will include, but is not limited to, the following information for the anticipated future generation of such waste streams:

(a) description of the anticipated solid waste streams which includes a detailed description of the process or processes that generated the waste;

(b) an analysis of whether or not the anticipated solid waste stream will be excluded from regulation under 40 C.F.R. §§ 261.3 and 261.4, as adopted by K.A.R. 28-31-261;

(c) an analysis of whether or not the anticipated solid waste stream is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261, as adopted by K.A.R. 28-31-261; and

(d) an analysis of whether the anticipated solid waste stream is identified in 40 C.F.R. Part 261 Subpart C as a potential "characteristic" hazardous waste, as adopted by K.A.R. 28-31-261. To determine whether the waste fails any of the characteristics in Subpart C, the amended SOP may need outline analysis using one of the methods found in Subpart C of Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any proposed laboratory analyses used to make this determination must be set forth in the submitted documentation.

80. The hazardous waste determinations required by Paragraphs 78 and 79 above shall be reviewed by EPA's representative identified in Paragraph 81. The EPA may approve the document, approve it with comments, or provide comments to be addressed by Respondent in a revised document. If EPA approves the document with comments, Respondent shall incorporate the comments into the hazardous waste determination. If EPA provides comments and requests a revision, Respondent shall address EPA's comments and resubmit the document. If EPA issues comments or requests a revision with which Respondent disagrees, Respondent may assert dispute resolution per Paragraphs 92 to 94.

81. Thirty (30) days following the end of each calendar quarter (i.e., April 30, July 30, October 30, and January 30), for the eight quarterly periods that occur after the effective date of this Consent Agreement and Final Order, Respondent shall prepare and submit to EPA a Quarterly Vanadium Pentoxide Waste Management Report that shall contain the documentation of all offsite disposal of wastes contaminated by vanadium pentoxide from the Catacarb process that occurred during the prior quarterly period. This documentation shall include copies of any hazardous waste manifests or special waste authorization approved by KDHE for the offsite disposal of such wastes.

82. Respondent shall submit all documentation generated to comply with the requirements as set forth above to the following address:

Edwin G. Buckner, PE
ECAD/CB/RCRA
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

83. Because the areas impacted by the disposal of the P120 wastes have not been completely investigated, the EPA reserves its right to take any appropriate enforcement action against Respondent with respect to the need to remediate, or to address P120 hazardous wastes, in these areas until such time as the Respondent is bound by an enforceable instrument or agreement that addresses these areas, including but not limited to, the 1990 corrective action order (Docket No. VII-90-H-0028) as amended, any future corrective action order, a closure and/or post-closure order or permit, or any other enforceable order or agreement with KDHE or EPA.

84. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

85. The effect of settlement described in the immediately preceding paragraph is

conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

86. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with the above-described requirements of RCRA, 42 U.S.C. § 6901 et. seq., as incorporated into the Kansas authorized program, its implementing regulations, and any permit issued pursuant to RCRA at the facility. In addition, EPA acknowledges that Respondent is performing RCRA corrective action at the facility, pursuant to Administrative Order on Consent Docket No. VII-90-H-0028 and the amendments thereto.

87. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

88. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty Thousand, Thirty-Nine Dollars ($60,039) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

89. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, 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.

90. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should 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 and the environment.

91. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Dispute Resolution

92. The parties shall attempt to resolve disagreements expeditiously and informally.

93. If Respondent objects to EPA's decisions related to the compliance actions for hazardous waste determinations set forth in Paragraphs 78 to 80, taken pursuant to this CAFO, it shall notify EPA, in writing, of its objection(s) within fourteen (14) days after such action. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations, unless extended by joint agreement of the parties.

94. Any agreement reached by the parties pursuant to these Dispute Resolution provisions shall be in writing and shall be incorporated into this CAFO. If the parties are unable to reach an agreement through the formal negotiations, the Director of Region 7 EPA's Compliance and Enforcement Assurance Division, or his or her designee, will issue a written decision on the dispute to Respondent.

95. Following resolution of the dispute, the decision shall be incorporated and become an enforceable part of this CAFO.

General Provisions

96. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

97. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA Region 7 ("Effective Date"). Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

98. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

99. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

100. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

101. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

RESPONDENT:

Harcros Chemicals Inc.

9/20/2019
Date

Signature
Printed Name: JOHN P. CLEARY
Title: VICE PRESIDENT

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/23/19
Date

DeAndré Singletary
Acting Director
Enforcement and Compliance Assurance Division

9/23/19
Date

Howard Bunch, Attorney
Office of Regional Counsel

FINAL ORDER

102. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

9/23/19

Karina Borromeo
Regional Judicial Officer

Date

APPENDIX A:

Appendix A – Supplemental Environmental Project

As described in Paragraph 61 of the CAFO, Harcros will implement a Supplemental Environmental Project, as described below.

Harcros will design and install an isopropyl alcohol (IPA) separation unit as an environmental control at its Kansas City, Kansas, facility. Harcros is evaluating specific control options, including but not limited to a distillation column and a reactor. The IPA separation unit will have three-fold, multi-media benefits: reduction of air emissions from IPA processes at the facility, reduction of IPA concentrations going from the facility to the Publicly-Owned Treatment Works, and reduction of IPA in trenches and equalization basin sludge at the facility.

Based on current estimates, the project is expected to reduce the IPA concentrations discharged to the POTW by more than 90%. In addition, the project is expected to capture all IPA washes, preventing them from entering the waste water system. This is anticipated to reduce IPA load to the POTW by 30,000 gallons per year, in addition to reducing the amount of surfactants that enter the POTW. The project is also estimated to reduce air emissions from IPA processes by as much as 25%. Payback of this project is expected to be no less than 5 years. Concentrations of IPA in sludge from the equalization basin and trenches would also be reduced.

Harcros estimates the project will cost no less $600,000 (Preliminary cost estimates are attached hereto). As described in Paragraph 63 of the CAFO, within 90 days of the Effective Date of the CAFO, Harcros will submit SEP Work Plan for the design of the selected environmental control to EPA and will implement the project within 12 months of the submittal of the SEP Work Plan.

PROPOSED SUPPLEMENTAL ENVIRONMENTAL PROJECT

Manufacturing is looking at several options for improving our recycling of IPA in our closed loop system for reactor washouts. One includes a distillation column and another is evaporation in a new reactor. They have worked up the estimated cost for evaporation in a new reactor with a total of $615,000. In both cases, the improve systems will decrease our air emissions of a IPA which is a VOC plus reduce the amount of IPA that goes to the city waste water treatment facility through the EQ tank. Below is the line item of the engineering estimate:

Reactor	$20,000.00
Pump	$4,000.00
Condenser	$60,000.00
Heat exchanger	$15,000.00
Chiller	$144,000.00
Tanks(2x1,500 gal)	$6,000.00
Piping&Install	$80,000.00
Insulation	$50,000.00
Agitator	$40,000.00
electrical	$15,000.00
Automation	$100,000.00
electrical trace	$20,000.00
shipping	$14,000.00
Contingency(10%)	$46,800.00
TOTAL	$614,800.00

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Howard Bunch, Attorney
Office of Regional Counsel
Region 7, EPA
Bunch.howard@epa.gov

Copy via Certified Mail, Return Receipt Requested to Respondent:

Mr. Jack Cleary, P.E., Vice President
Risk Management and Regulatory Affairs
Harcros Chemicals Inc.
5200 Speaker Road
Kansas City, Kansas 66106

Copy via Email to the State of Kansas:

Julie Coleman, Director (e-copy)
Bureau of Waste Management
Kansas Department of Health and Environment

Ken Powell (e-copy)
Compliance and Enforcement, Waste Reduction, and Assistance Section
Kansas Department of Health and Environment

Dated this 23rd day of Sept, 2019.

Signed
Edna Steen Beeler
for Lisa Haugen Clerk
R7 Hearing