



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

MAR 16 2010

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL 7009 1680 0000 7667 0043
RETURN RECEIPT REQUESTED

Mr. Brian Hessler
Assistant Director of Manufacturing
Karnak Midwest LLC
Midwest Plant
2601 Gardner Road
Broadview, Illinois 60155

Re: Consent Agreement and Final Order
Karnak Midwest LLC

Docket No: **RCRA-05-2010-0011**

Dear Mr. Hessler:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on ~~_____~~ **MAR 16 2010** with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$5,500 in the manner prescribed in paragraph 76 of the CAFO, and reference all checks with the number **BD 2751042R011** and docket number **RCRA-05-2010-0011**. Your payment is due within thirty (30) calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Willie H. Harris".

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Karnak Midwest LLC)
Broadview, Illinois)
Respondent)
_____)

Docket No. RCRA-05-2010-0011
Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

RECEIVED
MAR 16 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Karnak Midwest LLC, a corporation doing business in the State of Illinois.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6939e and the regulations at 40 C.F.R. §§ 260.1 – 279.82.

Statutory and Regulatory Background

12. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA,

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986; 51 Fed. Reg. 3778 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009, (73 FR 75340).

General Allegations

17. Respondent was and is a "person" as defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent blends asphalt and solvents in order to manufacture and package roof coatings.

19. On September 11, 2008, EPA conducted an inspection of Respondent's facility located at 2601 Gardner Road, Broadview Illinois.

20. Respondent's facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

21. At all times relevant to this CAFO, Respondent generated solid wastes including used fluorescent light bulbs and waste roof coatings.

22. Respondent's processes at the facility produce hazardous wastes identified or listed in 35 IAC §§ 721.120 - 721.131 or cause a hazardous waste to become subject to regulation under 35 IAC Parts 720-729 [40 C.F.R. Parts 260-270].

23. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, or the analogous Illinois regulations as part of the applicable state hazardous waste management program for the state of Illinois, or both.

24. Respondent is a "generator," as that term is defined in 35 IAC § 720.110 [40 C.F.R. § 260.10].

25. Pursuant to 35 IAC § 721.105(a) [40 C.F.R. 261.5(a)], a generator is a conditionally exempt small quantity generator in a calendar month if it generates no more than 100 kilograms of hazardous waste in that month.

26. Respondent collects spilled and leaked roof coatings for management and disposal as hazardous waste.

27. Pursuant to 35 IAC § 721.121 [40 C.F.R. 260.21], Respondent's waste roof coatings are ignitable and have the EPA hazardous waste number of D001.

28. At the time of the inspection, Respondent stored seven 55-gallon drums containing waste roof coatings in its hazardous waste storage area.

29. The seven 55-gallon drums of waste roof coatings in Respondent's hazardous waste storage area held approximately 385 gallons or 1,750 kilograms of hazardous waste.

30. At the time of the inspection, Respondent accumulated waste roof coatings in two 55-gallon drums and other smaller containers at or near the point where the wastes were generated.

31. Respondent's two 55-gallon drums of waste roof coatings at or near the point where the wastes were generated were each two thirds full and held approximately 72 gallons or 327 kilograms of hazardous waste.

32. At the time of the inspection, Respondent had accumulated greater than 1000 kilograms of hazardous waste.

33. Pursuant to 35 IAC § 721.105(g)(2) [40 C.F.R. § 261.5(g)(2)], if a conditionally exempt small quantity generator accumulates more than a total of 1000 kilograms of hazardous wastes on-site, all those accumulated wastes are subject to regulation under the special provisions of 35 IAC § 722 [40 CFR Part 262] applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of 35 I.A.C. §§ 702, 703, 705 and 723 through 726 and 728 [40 C.F.R. Parts 263 through 266, 268, and parts 270 and 124 of Chapter I], and the applicable notification requirements of section 3010 of RCRA.

34. At the time of the inspection, Respondent was required to manage its accumulated hazardous waste in compliance with the standards applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month.

35. EPA issued Respondent a Notice of Violation (NOV) dated December 16, 2008.

36. Respondent submitted January 2 and May 8, 2009, responses to EPA's December 16, 2008 NOV.

Count 1: Open Containers of Hazardous Waste

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

38. Pursuant to 35 I.A.C. § 722.134(d)(2) [40 C.F.R. § 262.34(d)(2)], a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 35 I.A.C. Subpart I (except 35 I.A.C. §§ 725.276 and 725.278) [40 C.F.R. § 265 Subpart I, except §§ 265.176 and 265.178].

39. Pursuant to 35 I.A.C. Subpart I [40 C.F.R. § 265 Subpart I], a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste in accordance with 35 I.A.C. § 275.273(a)[40 C.F.R. § 265.173(a)].

40. At the time of the inspection, three of the seven 55-gallon drums containing waste roof coatings in Respondent's hazardous waste storage area were not closed and no one was present adding or removing waste.

41. At the time of the inspection, Respondent allegedly failed to store hazardous waste in closed containers in accordance with 35 I.A.C. Subpart I [40 C.F.R. Part 265 Subpart I].

42. As set forth above, Respondent allegedly did not meet the conditions of 35 I.A.C. Subpart I [40 C.F.R. Part 265 Subpart I], necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent allegedly stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 35 I.A.C. § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 2: Failure to Label or Mark with the words, "Hazardous Waste" and the

Accumulation Start Date

43. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

44. Pursuant to 35 I.A.C. § 722.134(d)(4) [262.34(d)(4)], a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 35 I.A.C. § 722.134(a)(2) and (a)(3) [40 C.F.R. § 262.34(a)(2) and (a)(3)].

45. Pursuant to 35 I.A.C. § 722.134(a)(2) [40 C.F.R. 262.34(a)(2)], the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

46. At the time of inspection, the seven containers of hazardous waste in Respondent's hazardous waste storage area were not clearly marked with the start date for the accumulation period.

47. 35 I.A.C. § 722.134(a)(3) [40 C.F.R. § 262.34(a)(3)] states that while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste."

48. At the time of the inspection, the seven containers of hazardous waste in Respondent's hazardous waste storage area were allegedly not labeled or marked clearly with the words "Hazardous Waste."

49. As set forth above, Respondent allegedly did not meet the conditions of 35 I.A.C. § 722.134(d)(4) [40 C.F.R. § 262.34(d)(4)] necessary to exempt it from the requirement to obtain

interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 35 I.A.C. § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 3: Satellite Accumulation

50. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

51. Pursuant to 35 I.A.C. § 722.134(c)(1) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 35 I.A.C. § 722.134(a) [40 C.F.R. § 263.34(a)] provided that he complies with 35 I.A.C. §§ 725.21, 725.272, and 725.273(a) [§§ 265.171, 265.172 and 265.173(a)] and he marks his containers with either the words “Hazardous Waste” or with other words that identify the contents of the containers.

52. Pursuant to 35 I.A.C. § 722.134(c)(2) [40 C.F.R. § 262.34(c)(2)], a generator who accumulates in excess of 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate must, with respect to that amount of excess waste, comply within three days with 35 I.A.C. § 722.134(a) [40 C.F.R. § 262.34(a)] and, during the three day period, the generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

53. Pursuant to 35 I.A.C. § 725.273(a) [40 C.F.R. § 265.173(a)], a container holding hazardous waste must always be closed during storage, except when it is necessary to add or

remove waste.

54. At the time of the inspection, Respondent had at least two 55-gallon drums and other smaller containers of waste roof coatings at or near the point where the wastes were generated, and which were under the control of the operator of the process generating the waste.

55. At the time of the inspection, the two 55-gallon drums and other smaller containers of waste roof coatings at or near the point where the wastes were generated were not closed and no one was present adding or removing waste.

56. At the time of the inspection, the two 55-gallon drums and other smaller containers of waste roof coatings at or near the point where the wastes were generated were not marked with either the words "Hazardous Waste" or with other words that identified the contents of the containers.

57. At the time of the inspection, Respondent had accumulated in excess of 55 gallons of waste roof coatings at or near the point where the wastes were generated.

58. At the time of the inspection, Respondent failed to mark the two 55-gallon drums and other smaller containers of waste roof coatings at or near the point where the wastes were generated with the date the excess amount of hazardous waste began accumulating.

59. As set forth above, Respondent allegedly did not meet the conditions of 35 I.A.C. § 722.134(c)(1) [40 C.F.R. § 262.34(c)(1)] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 35 I.A.C. § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 4: Failure to Maintain Aisle Space

60. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

61. Pursuant to 35 I.A.C. § 722.134(d)(4) [40 C.F.R. § 262.34(d)(4)], a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 35 I.A.C. 725 Subpart C [40 C.F.R. Part 265, Subpart C].

62. Pursuant to 35 I.A.C. 725 Subpart C [40 C.F.R. Part 265, Subpart C], the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency unless aisle space is not needed for any of these purposes, in accordance with 35 I.A.C. § 725.135 [40 C.F.R. § 265.35].

63. At the time of the inspection, the EPA inspector was unable to move between the rows of containers in Respondent's hazardous waste storage area due to a lack of aisle space.

64. At the time of the inspection, Respondent failed to maintain aisle space in its hazardous waste storage area for the unobstructed movement of personnel.

65. As set forth above, Respondent allegedly did not meet the conditions of 35 I.A.C. § 722.134(d)(4) [40 C.F.R. § 262.34(d)(4)] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 35 I.A.C. § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 5: Clean Up Spills of Hazardous Waste

66. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

67. Pursuant to 35 I.A.C. § 722.134(d)(5)(D)(ii) [40 C.F.R. § 262.34(d)(5)(iv)(B)], a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that in the event of a spill, the generator contains the flow of hazardous waste to the extent possible, and as soon as practicable, clean up the hazardous waste and any contaminated materials or soil.

68. At the time of the inspection, Respondent allowed hazardous waste or hazardous waste constituents to accumulate on the floor of the cement line mixing area.

69. At the time of the inspection, Respondent allowed hazardous waste or hazardous waste constituents to accumulate on the floor of the aluminum line mixing area.

70. At the time of the inspection, Respondent allowed hazardous waste or hazardous waste constituents to accumulate on the floor of the indoor tank farm area near tank 16.

71. At the time of the inspection, Respondent allowed hazardous waste or hazardous waste constituents to accumulate on the floor of the indoor tank farm area near tank 20.

72. At the time of the inspection, Respondent allowed hazardous waste or hazardous waste constituents to accumulate on the floor of the indoor tank farm area near tank 25.

73. At the time of the inspection, Respondent's employee Brian Hessler stated that the material in the mixing area would stay on the floor for up to three days.

74. As set forth above, Respondent allegedly did not meet the conditions of 35 I.A.C. § 722.134(d)(5)(D)(ii) [40 C.F.R. § 262.34(d)(5)(iv)(B)] necessary to exempt it from the

requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 35 I.A.C. § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Civil Penalty

75. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$5,500.00. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

76. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,500.00 civil penalty for the RCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for checks sent by regular U.S. Postal Service mail

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

for checks sent by express mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must state In the Matter of Karnak Midwest LLC, the docket number of this CAFO,

and the billing document number.

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

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

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

Brian Barwick (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

79. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

80. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and human health by reducing the volume of hazardous wastes

generated at Respondent's facility.

81. Respondent must complete the SEP as follows:

a. Respondent must replace aluminum fill line equipment in order to reduce solid and hazardous waste generation from the aluminum fill line.

b. Respondent must issue all purchase orders for equipment within five business days after the effective date of this CAFO.

c. Respondent must complete installation, startup and troubleshooting of the project within twenty weeks after the effective date of this CAFO.

d. Respondent must secure a minimum of a 40% reduction in hazardous waste generation per unit of production from the aluminum fill line compared to the average annual hazardous waste generation from the aluminum fill line using the generation totals divided by aluminum fill line production from the years of 2006, 2007, and 2008, in order for the SEP to be considered successful.

e. Respondent must spend at least \$23,161 to purchase the equipment and a total of no less than \$28,000 to complete the project, which includes internal costs.

f. Respondent must continuously use or operate the equipment installed as the SEP for five year(s) following its installation; unless a process improvement will result in an additional reduction in the generation of hazardous waste or the company permanently ceases operations of the aluminum fill line.

82. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

83. The EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

84. Respondent must submit a SEP completion report to EPA within twenty-four weeks after the effective date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

85. Respondent must submit all notices and reports required by this CAFO by first class mail to Daniel Chachakis of the RCRA Branch.

86. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

87. Following receipt of the SEP completion report described in paragraph 84, above,

EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report.
- b. There are unreasonable deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP in a reasonable manner or the SEP report and EPA will seek stipulated penalties under paragraph 89.

88. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any reasonable requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 89, below.

89. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 81, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 81.

- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$18,000, in addition to any penalty required under subparagraph a, above.

- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$24,740, in addition to the penalty required under subparagraph a, above.

Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 81 for implementing the SEP, fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Period of violation</u>	<u>Penalty per violation per day</u>
\$100	1 st through 14 th day
\$200	15 through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

90. The EPA's determination of whether Respondent satisfactorily completed the SEP in a reasonable manner will bind Respondent.

91. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 76, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

92. Any public statement that Respondent makes referring to the SEP must include the following language, "Karnak Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Karnak Corporation for alleged violations of 35 I.A.C. Subpart I [40 C.F.R. Part 265 Subpart I], failure to keep closed containers of hazardous waste unless adding or removing waste; 35 I.A.C. § 722.134(a)(2) [40 C.F.R. 262.34(a)(2)] and 35 I.A.C. § 722.134(a)(3) [40 C.F.R. § 262.34(a)(3)], failure to label or mark containers with the words, "Hazardous Waste" and the accumulation start date; 35 I.A.C. § 725.273(a) [40 C.F.R. § 265.173(a)], failure to manage satellite accumulation

containers properly; 35 I.A.C. 725 Subpart C [40 C.F.R. Part 265, Subpart C], failure to maintain aisle space; and 35 I.A.C. § 722.134(d)(5)(D)(ii) [40 C.F.R. § 262.34(d)(5)(iv)(B)], failure to clean up spills of hazardous waste as soon as practicable.”

93. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO, Respondent must notify the U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent’s past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

94. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

95. If the EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.

96. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

97. Nothing in this CAFO is intended to, nor will be construed to, constitute EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

98. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

100. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.

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

102. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, the EPA's RCRA Civil Penalty Policy, and the EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

104. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

SIGNATORIES

Each undersigned representative of a party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind legally such party to this document.

Karnak Midwest LLC, Respondent


2/19/10
Date



Sarah J. Jelin
Manager
Karnak Midwest LLC

United States Environmental Protection Agency, Complainant

3/12/10
Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Karnak Corporation
Docket No. RCRA-05-2010-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/16/10
Date

Walter W. Karolyh
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
MAR 16 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 28 2010
OFFICE OF REGIONAL
COUNSEL

CASE NAME: Karnak Midwest LLC
DOCKET NO: RCRA-05-2010-0011

CERTIFICATE OF SERVICE

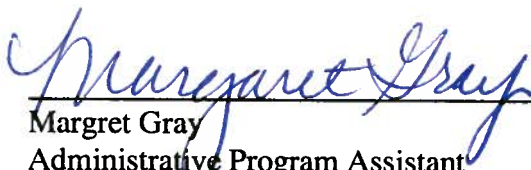
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Brian Hessler
Assistant Director of Manufacturing
Karnak Midwest LLC
Midwest Plant
2601 Gardner Road
Broadview, Illinois 60155

Certified Mail Receipt # 7009 0000 7667 0043

Dated: 3-16, 2010


Margret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Region 5
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590

RECEIVED
MAR 16 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**