



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 14 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nancy B. Berenson
Assistant General Counsel
Arkema Inc.
2000 Market Street, 26th Floor
Philadelphia, Pennsylvania 19103

RE: Arkema, Inc.
Consent Agreement and Final Order (CAFO)
Docket No. RCRA-04-2010-4011(b)

Dear Ms. Berenson:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Arkema, Inc. on notice of its potential duty to disclose to the Securities Exchange Commission (SEC) any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404) 562-9705.

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred R. Politzer".

Alfred R. Politzer
Assistant Regional Counsel
Office of Environmental Accountability

Enclosures (2)

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

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-04-2010-4011(b)
)	
)	
ARKEMA INC.)	
2316 HIGHLAND AVENUE)	PROCEEDING UNDER SECTION
CARROLLTON, KENTUCKY 41008)	3008(a) OF THE RESOURCE
)	CONSERVATION AND RECOVERY
)	ACT, 42 U.S.C. § 6928(a)
EPA ID NO.: KYD 006 373 922)	
)	
RESPONDENT)	
_____)	

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HEALTH AND SAFETY

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 United States Code (U.S.C.) § 6921, *et seq.*, and Chapter 224 of the Kentucky Revised Statutes (KY. Rev. Stat. Ann.), Subchapters 40, 43, and 46. This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and the regulations promulgated pursuant thereto at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 - 268, 270 and 279; and KY. Rev. Stat. Ann. § 226.46-012, *et seq.*, and the regulations promulgated pursuant thereto at Title 401 of the Kentucky Administrative Regulations (KY. Admin. Reg.) Chapters 30-40.
2. 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, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CAFO, and Respondent agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Arkema Inc., incorporated under the laws of the Commonwealth of Pennsylvania, doing business in the Commonwealth of Kentucky, and located at 2316 Highland Ave, Carrollton, Kentucky 41008.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), Kentucky has received final authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, and 401 KY. Admin. Reg. 30:005, *et. seq.*
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the state's authorization status, and are implemented by EPA until the state is granted final authorization with respect to those requirements. Kentucky has received final authorization for its HSWA program.
8. Although EPA has granted Kentucky the authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the authorized Kentucky program. EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and Kentucky.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant gave written notice of this action to Kentucky before the issuance of this CAFO.
10. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), and KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, require the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in 40 C.F.R. Part 262 and 401 KY. Admin. Reg. Chapter 32.
11. Section 3004 of RCRA, 42 U.S.C. § 6924, and KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, require the promulgation of standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these standards are found at 40 C.F.R. Part 264 and 401 KY. Admin. Reg. Chapter 34.
12. Section 3005 of RCRA, 42 U.S.C. § 6925, and KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this

requirement are found at 40 C.F.R. Parts 264, 265, and 270, and 401 KY. Admin. Reg. Chapters 34, 35, and 36.

13. Pursuant to 40 C.F.R. § 261.2 and 401 KY. Admin. Reg. 31:010 Section 2, a “solid waste” is any discarded material that is not otherwise excluded by regulation.
14. Pursuant to 40 C.F.R. § 261.3 and 401 KY. Admin. Reg. 31:010 Section 3, a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and 401 KY. Admin. Reg. 31:010 Section 4, and it meets any of the criteria specified in 40 C.F.R. § 261.3(a)(2).
15. Pursuant to 40 C.F.R. § 260.10 and 401 KY. Admin. Reg. 31:005 Section 1, a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 and 401 KY. Admin. Reg. 31:010 Section 3, or whose act first causes a hazardous waste to become subject to regulation.
16. Pursuant to 40 C.F.R. § 262.34(a) and 401 KY. Admin. Reg. 32:030 Section 5, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that the generator complies with the management requirements listed in 40 C.F.R. §§ 262.34(a)(1)-(4) (hereinafter referred to as the “40 C.F.R. § 262.34(a) permit exemption”).
17. Pursuant to 40 C.F.R. § 262.34(b) and 401 KY. Admin. Reg. 32:030 Section 5, a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the permit requirements of 40 C.F.R. Part 270.
18. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii), a condition of the 40 C.F.R. § 262.34(a) permit exemption requires a generator to comply with 40 C.F.R. § 265.195(b) and 401 KY. Admin. Reg. 35:190 Section 6 (requiring the operator of a hazardous waste storage tank to inspect the tank system at least once each day the tank is in operation).

IV. EPA ALLEGATIONS AND DETERMINATIONS

19. Respondent is a “person” as defined in 40 C.F.R. § 260.10 and 401 KY. Admin. Reg. 31:005 Section 1.
20. Respondent is the “owner” and “operator” of a “facility,” as those terms are defined in 40 C.F.R. § 260.10 and 401 KY. Admin. Reg. 31:005 Section 1.
21. Respondent manufactures organic and inorganic compounds. The principal production processes are batch mixing, filtration and drying. As a result of its production processes, Respondent generates a spent solvent waste stream (benzene-containing waste).

22. Respondent generates waste that is a "solid waste" as defined in 40 C.F.R. § 261.2 and 401 KY. Admin. Reg. 31:005 Section 1.
23. Pursuant to 40 C.F.R. § 261.20 and 401 KY. Admin. Reg. 31:030 Section 5, the facility's Tank No. 1709 wastestream is characteristically hazardous for ignitability (D001) and toxicity (D018 benzene).
24. Respondent generates hazardous waste as defined in 40 C.F.R. § 261.3 and 401 KY. Admin. Reg. 31:010 Section 3.
25. The Kentucky Department for Environmental Protection (KDEP) has assigned Respondent EPA ID number KYD 006 373 922.
26. On August 24, 2009, EPA and KDEP conducted a RCRA Compliance Evaluation Inspection (CEI) of Respondent's facility.
27. At the time of the CEI, Respondent had been storing benzene-containing waste in Tank No. 1709 for greater than 90 days (approximately 132 days). As a result, pursuant to 40 C.F.R. § 262.34(b) and 401 KY. Admin. Reg. 32:030 Section 5, Respondent is an operator of a storage facility and subject to the permit requirements of 40 C.F.R. Part 270.
28. EPA therefore alleges that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925, and KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, because Respondent failed to comply with 40 C.F.R. § 270, and by operating a storage facility without having interim status or a permit.
29. At the time of the CEI, Respondent had failed to conduct daily inspections of Tank No. 1709 (for approximately 16 days).
30. EPA therefore alleges that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925, and KY. Rev. Stat. Ann. § 226.46-012, *et. seq.*, for storing hazardous waste without a permit or interim status, because Respondent failed to meet the 40 C.F.R. § 262.34(a)(1)(ii) condition of the 40 C.F.R. § 262.34(a) permit exemption by not complying with 40 C.F.R. § 265.195(b) and 401 KY. Admin. Reg. 35:190 Section 6.
31. On February 24, 2010, EPA issued a Notice of Violation (NOV) to Respondent that included the foregoing allegations. In addition, the NOV alleged that carbon canisters were improperly used as a control device to vent volatile organic emissions under 40 C.F.R. § 265.1085. However, EPA subsequently determined that the allegations of noncompliance related to the carbon canisters were incorrect.

V. TERMS OF AGREEMENT

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

32. Within thirty (30) calendar days of receipt of the executed copy of this CAFO, Respondent shall submit to EPA and KDEP a certification signed by a duly authorized representative stating that the facility is in compliance with RCRA and that all the violations alleged in this CAFO have been corrected.

This certification shall be as follows:

“I certify under penalty of law, to the best of my knowledge and belief that all violations alleged in this CAFO have been corrected. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

33. The certifications required to be submitted under this CAFO shall be mailed to:

Javier Garcia
RCRA Division – 10th Floor
US EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

And to:

Jeff Cummins
Division of Waste Management
Kentucky Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601

34. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
35. Respondent neither admits nor denies the above factual allegations and determinations.
36. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
37. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on the Paperwork Reduction Act.

38. Respondent waives any right pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO.
39. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA. The parties agree that compliance with the terms of this CAFO shall resolve all of Respondent's liability for civil penalties for the violations and facts alleged in the February 24, 2010 Notice of Violation, and alleged and stipulated to in this CAFO.
40. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

41. Respondent consents to the payment of a civil penalty in the amount of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200.00) within thirty (30) calendar days of the effective date of this CAFO.
42. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the docket number and facility name shall be referenced on the face of the check. If Respondent utilizes the US Postal Service, the payment shall be addressed to:

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

If Respondent utilizes non-US Postal express mail delivery, the payment shall be sent to:

United States Bank
Government Lockbox 979077
United States Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

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

Federal Reserve Bank of New York

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

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
United States Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White, (301) 887-6548

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

Patricia Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

And to:

Javier Garcia
South Enforcement and Compliance Section
RCRA Division – 10th Floor
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

44. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to

31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate.

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

45. Penalties paid pursuant to this CAFO are not tax deductible under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

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

VIII. RESERVATION OF RIGHTS

- 49. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
- 50. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.
- 51. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law

or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

52. This CAFO may be amended only by written agreement between EPA and Respondent.

IX. OTHER APPLICABLE LAWS

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

X. SERVICE OF DOCUMENTS

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

Alfred Politzer, Assistant Regional Counsel
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

Nancy B. Berenson, Assistant General Counsel
Arkema Inc.
2000 Market Street, 26th Floor
Philadelphia, Pennsylvania 19103

XI. SEVERABILITY

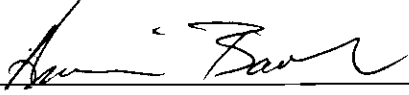
56. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions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

XII. EFFECTIVE DATE

57. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Arkema Inc.

By:  Dated: 8/9/2010

Print Title: Carrollten Ky Arkema Plant Manager

U.S. Environmental Protection Agency

By:  Dated: 8 | 17 | 2010

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

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CARROLLTON, KENTUCKY)	3008(a) OF THE RESOURCE
41008)	CONSERVATION AND RECOVERY
)	ACT, 42 U.S.C. § 6928(a)
EPA ID NO.: KYD 006 373 922)	
)	
RESPONDENT)	
_____)	

FINAL ORDER

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

BEING AGREED, IT IS SO ORDERED this 13th day of Sept., 2010.

BY: Susan B. Schub
 Susan B. Schub
 Regional Judicial Officer
 United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Arkema, Inc., Docket Number: RCRA-04-2010-4011(b), on SEP 14 2010 2010, and on SEP 14 2010, 2010, served the parties listed below in the manner indicated:

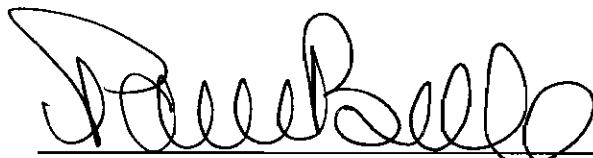
Alfred Politzer (Via EPA Internal Mail)
Assistant Regional Counsel
Office of Environmental Accountability
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Quatindra Smith (Via EPA's internal mail)
RCRA Division – 10th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

Nancy B. Berenson (Via Certified Mail – Return Receipt Requested)
Assistant General Counsel
Arkema, Inc.
2000 Market Street, 26th Floor
Philadelphia, Pennsylvania 19103

Date:

9-14-10



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