

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of: ) DEQ No. LQVC-NWR-08-04  
 )  
Arkema Inc. Facility ) ORDER ON CONSENT  
Portland, Oregon ) REQUIRING  
 ) SOURCE CONTROL MEASURES  
Arkema Inc., ) AND FEASIBILITY STUDY  
 )  
 )  
Respondent )

Pursuant to ORS 465.260(4), the Director, Oregon Department of Environmental Quality (DEQ), issues this Order on Consent (Consent Order) to Arkema Inc. (Arkema or Respondent). This Consent Order contains the following provisions:

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Attachment A Site Location  
Attachment B Scope of Work

1. Purpose

The purpose of this Consent Order is to perform a feasibility study (FS) at the Arkema Site, to evaluate and, if necessary, implement a river bank erodible soil source control measure, and to design and implement stormwater and groundwater source control measures for unpermitted discharges or releases of hazardous substances to the Willamette River at the Arkema Site, in accordance with ORS 465.200 to 465.545 and 465.900 and regulations promulgated thereto.

The parties anticipate that this Consent Order will be followed by a Consent Judgment at the time that a final remedial action plan is developed.

2. Stipulations

Respondent consents and agrees:

- A. To issuance of this Consent Order;
- B. To perform and comply with all provisions of this Consent Order;

- C. In any proceeding brought by the Oregon Department of Environmental Quality (DEQ) to enforce this Consent Order, not to challenge DEQ's jurisdiction to issue and enforce this Consent Order or challenge the validity of the Consent Order;
- D. To waive any right Respondent might have, prior to commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- E. To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim measure, source control measure, or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order; and
- F. To waive any right Respondent might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substances Remedial Action Fund of costs incurred under this Consent Order.

3. Findings of Fact

DEQ makes the following findings, some of which are based on information provided by Respondent, but without admission of any such facts by Respondent:

- A. Arkema is a Pennsylvania corporation.
- B. Arkema owns real property at 6400 NW Front Avenue, Portland, Oregon (Arkema Site or Site), occupying approximately 55 acres along the Willamette River at approximately River Mile 7.5. The general location of the Arkema Site is shown on Attachment A to this Consent Order. All manufacturing operations ceased at the Site in 2001, and significant demolition of the facility buildings has occurred.

- C. Historical manufacturing operations at the Site began in 1941 by Pennsylvania Salt Manufacturing, later known as Pennwalt Corporation. Between 1941 and 2001 various chemicals were produced at the facility, including but not limited to sodium chlorate, potassium chlorate, chlorine, sodium hydroxide, dichlorodiphenyltrichloroethane (DDT), sodium orthosilicate, magnesium chloride hexahydrate, ammonia, hydrogen, ammonium and sodium perchlorate, and hydrochloric acid.
- D. In 1990, Pennwalt's operations were combined with those of two other subsidiaries of Elf Aquitaine, and the new combined company was named Elf Atochem North America, Inc. In 2000, Elf Atochem became ATOFINA Chemicals, Inc. In 2004, ATOFINA Chemicals, Inc. changed its name to Arkema Inc.
- E. Waste from the manufacture of DDT that contained DDT, chlorobenzene, and spent sulfuric acid was discharged to a floor drain in the DDT process building at the Site from approximately 1947 to 1948 for less than a year. The floor drain is believed to have been connected to a pipe that discharged to the Willamette River. From 1948 until 1954, DDT manufacturing process residue was discharged directly to an unlined on-site settling pond, which was expanded to include a 285-foot overflow trench in 1950. A chlorobenzene recovery plant was added in 1950. Sodium and ammonium perchlorate were manufactured at the Arkema Site from 1958 until 1962. Release of perchlorate occurred during the manufacturing process from the sodium perchlorate process area and the ammonium perchlorate process area. Sodium chlorate was manufactured on site from 1941 until 2001. Sodium bichromate, which contains hexavalent chromium, was used in the chlorate manufacturing process. Releases of

hexavalent chromium occurred during the manufacture of sodium chlorate in the sodium chlorate process area.

- F. Historic operational practices have resulted in releases of hazardous substances at the Site. Prior to the completion of a number of interim remedial measures, initial Site characterization detected at depth DDT (31,000 mg/kg), chlorobenzene (15,000 mg/kg), chromium (1,100 mg/kg) and perchlorate (74 mg/kg) in site soil, DDT (450 ug/L), chlorobenzene 260,000 ug/L, chromium (17,100 ug/L) and perchlorate (290,000 ug/L) in groundwater and DDT (2 ug/L), hexavalent chromium (38 ug/L) and perchlorate (125 ug/L) in stormwater.
- G. Numerous interim remedial measures have been implemented at the Site to address hazardous substances in soil, groundwater and stormwater. 4,715 tons of soil with elevated DDT concentrations were removed from the former manufacturing process residue pond and trench areas in 2000-2001. Asphalt paving, temporary caps, and other stormwater conveyance system upgrades were completed in 2000-2001. From 2004-2006, air sparging and soil vapor extraction was employed to address residual chlorobenzene in soil and groundwater. In 2005, full scale calcium polysulfide injection was successfully conducted in the Chlorate Plant Area to reduce hexavalent chromium mobility in groundwater. In 2003 and 2006, bench-scale treatability studies for in situ treatment of perchlorate in groundwater were conducted. In 2006, the evaluation of a groundwater containment wall and pump-and-treat system was begun.
- H. The Arkema Site is currently subject to DEQ Voluntary Agreement No. ECVC-WMCVC-NWR-97-14 (Voluntary Agreement) between DEQ and Elf Atochem

North America, Inc. entered into on August 26, 1998. A portion of the RI/FS work required under the Voluntary Agreement has been completed by Arkema, as reflected in the Scope of Work attached to this Consent Order. This Consent Order supersedes the DEQ Voluntary Agreement as described in Section 5.

- I. The Arkema Site is located within or near the Portland Harbor Superfund Site, placed on the federal National Priorities List by the U.S. Environmental Protection Agency (EPA) in December 2000. By Memorandum of Understanding entered in February 2001, EPA is the lead agency for investigation and cleanup of in-water sediments contamination in the Willamette River in the Portland Harbor Superfund Site, and DEQ is the lead agency for implementing investigation and source control at upland facilities. This Consent Order is consistent with DEQ's responsibilities at the Portland Harbor Superfund Site. The Arkema Site is also the subject of an EPA Administrative Settlement Agreement and Order on Consent for Removal Action U.S. EPA Region 10 Docket No. CERCLA 10-2005-0191 (EPA Settlement Agreement and Order) concerning in-water sediments, issued to Arkema by EPA on June 27, 2005. This Consent Order does not affect implementation of the EPA Settlement Agreement and Order. DEQ will use best efforts to coordinate with EPA to minimize any duplication of work or inconsistencies between any removal action conducted pursuant to the EPA Settlement Agreement and Order and the Work required under this Consent Order.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. The substances described in Subsection 3.F. are “hazardous substances” within the meaning of ORS 465.200(16).
  - B. The presence of DDT, chlorobenzene, chromium, and perchlorate in soil, groundwater, and stormwater constitutes a “release” into the environment within the meaning of ORS 465.200(22).
  - C. The Arkema Site is a “facility” within the meaning of ORS 465.200(13).
  - D. Arkema is a “person” within the meaning of ORS 465.200(21).
  - E. As owner and operator of a facility, Arkema is strictly liable under ORS 465.255, and therefore may be required by DEQ to conduct any removal or remedial action necessary to protect public health, safety, and welfare and the environment, pursuant to ORS 465.260(4).
  - F. The activities required by this Consent Order are necessary to protect public health, safety, and welfare and the environment.
5. Termination of Voluntary Agreement
- DEQ and Arkema stipulate that DEQ Voluntary Agreement No. ECVC-WMCVC-NWR-97-14 is terminated as of the date of DEQ issuance of this Consent Order.

Based upon the above Stipulations, Findings of Fact, and Conclusions of Law and Determinations,

DEQ ORDERS:

- 6. Work to be Performed
  - A. Feasibility StudyRespondent shall perform a feasibility study in accordance with the terms and schedule set forth in the Scope of Work (SOW), attached to and incorporated by

reference into this Consent Order as Attachment B, and as set forth in any DEQ-approved work plan prepared in accordance with the SOW.

B. River Bank Erodible Soil Source Control Evaluation and Implementation

For any unpermitted discharge or release of hazardous substances from the river bank area of the Site, as defined in a DEQ-approved work plan, to the Willamette River or to its sediments identified in the remedial investigation reports submitted to DEQ in 2003, 2005, and 2006 and not otherwise addressed in the ERM Focused Feasibility Study submitted to DEQ in May 2008, Arkema shall identify and evaluate potential river bank erodible soil contaminant migration to the Willamette River, and any hot spots of contamination present in the river bank, in accordance with the SOW and the terms and schedule of the DEQ-approved work plan. Upon DEQ approval of a source control evaluation, Arkema, if necessary, shall develop a source control measure work plan in accordance with DEQ's directions and, upon DEQ approval, implement the work plan. DEQ will review and approve the source control measure pursuant to OAR 340-122-0070, and in coordination with EPA to avoid duplication or inconsistency in relation to any removal action conducted pursuant to the EPA Settlement Agreement and Order.

C. Design and Implementation of Stormwater and Groundwater Source Control Measures

Arkema shall design and implement stormwater and groundwater source control measures in accordance with the SOW and the terms and schedule of a DEQ-approved work plan.

D. Additional Measures

(1) Respondent may elect at any time during the term of this Consent Order to undertake measures, other than those required by this Consent Order, to address the release or threatened release of hazardous substances at the Site. Any such additional measure (including but not limited to engineering or institutional controls) shall be subject to prior approval by DEQ, which approval shall not be unreasonably withheld. DEQ's prior approval shall not be required in the event of any emergency response action; provided that Respondent shall promptly notify DEQ of the emergency and actions taken.

(2) DEQ may determine that, in addition to the work specified in the SOW or in an approved work plan, additional work is necessary to complete the feasibility study in satisfaction of OAR Chapter 340 Division 122, or is necessary to address unanticipated threats to human health or the environment. DEQ may require that such additional work be incorporated into the applicable work plan by modification and/or be performed in accordance with a DEQ-specified schedule. Respondent shall modify the work plan and/or implement the additional work in accordance with DEQ's directions and schedule, or invoke dispute resolution under Subsection 8.L. within 14 days of receipt of DEQ's requirement of additional work.

7. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of this Consent Order through issuance of a press release describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ

shall provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

8. General Provisions

A. Qualifications of Personnel

(1) All work required by this Consent Order must be performed under the supervision of a qualified environmental professional experienced in hazardous substance investigation or remediation. DEQ has approved the personnel and contractors used by Respondent to date in the performance of work under the Voluntary Agreement, which constitutes approval for purposes of this Consent Order.

(2) If Respondent proposes to change supervisory or key contractor personnel during the course of work under this Consent Order, Respondent shall provide to DEQ in writing the name, title, and qualifications of such personnel and contractors. The qualifications of such personnel shall be subject to DEQ review and, at DEQ's election, DEQ approval or disapproval. DEQ's approval shall not be unreasonably withheld. If DEQ disapproves the qualifications of any personnel, DEQ shall provide Respondent its reasons in writing. Respondent shall then provide to DEQ in writing the name, title, and qualifications of replacement personnel, subject to DEQ's review and approval as described above. If DEQ subsequently disapproves the replacement personnel, DEQ reserves its right under ORS 465.260 to perform work, to terminate this Consent Order, and to seek reimbursement of costs from Respondent.

B. DEQ Access and Oversight

(1) For purposes directly related to this Consent Order, Respondent shall allow DEQ to enter and move freely about portions of the Site within its possession or

control at all reasonable times for the purposes, among others of: inspecting records relating to work under this Consent Order; observing Respondent's progress in implementing this Consent Order; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by Respondent; and, using camera, sound recording, or other recording equipment.. DEQ shall use its best efforts, but not be required, to provide reasonable advance notice before entering the Site, and may be accompanied by an Arkema representative or agent if available. DEQ shall comply with health and safety requirements of any DEQ health and safety plan in effect at the time of entry onto the Site. Respondent shall also provide DEQ with its health and safety plan for the Site. DEQ shall use its best efforts to comply with Respondent's health and safety plan.

(2) Respondent shall also seek to obtain access to property not owned or controlled by Respondent as necessary to perform the work required in this Consent Order, including access by DEQ for purposes described in Paragraph 8.B.(1). DEQ shall use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

(3) Respondent shall permit DEQ to inspect and copy all records, files, photographs, documents, and data relating directly to work under this Consent Order, except that Respondent is not required to permit DEQ inspection or copying of items subject to attorney-client or attorney work product privilege.

(4) Respondent shall identify to DEQ any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work product privilege. Attorney-

client and work product privileges may not be asserted with respect to any records required to be submitted under Paragraph 8.F.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

C. Project Managers

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order shall be directed to:

DEQ's  
Project Manager:

Matt McClincy  
DEQ Northwest Region  
2020 SW Fourth Avenue, Suite 400  
Portland, Oregon 97201-4987  
(503) 229-5538  
(503) 229-6899 (fax)  
[mcclincy.matt@deq.state.or.us](mailto:mcclincy.matt@deq.state.or.us)

Respondent's  
Project Manager:

Todd Slater  
Legacy Site Services LLC  
468 Thomas Jones Way  
Suite 150  
Exton, PA 19341-2528  
(610) 594-4430  
(610) 594-4439 (fax)  
[todd.slater@total.com](mailto:todd.slater@total.com)

with a copy to:  
Stephen T. Parkinson  
Groff Murphy PLLC  
300 East Pine Street  
Seattle, WA 98122  
(206) 628-9500  
(206) 628-9506 (fax)  
[sparkinson@groffmurphy.com](mailto:sparkinson@groffmurphy.com)

(2) The Project Managers shall be available and have the authority to make day-to-day decisions necessary to implement the work plans. The Project Managers also may modify, by mutual agreement in writing, the SOW and work plans as necessary to complete the FS in satisfaction of OAR Chapter 340 Division 122 or as necessary to address unanticipated threats to human health or the environment.

D. Notice and Samples

(1) Respondent shall make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five (5) working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent shall make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ and/or its authorized representative to take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order.

(2) In the event DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ shall make every reasonable effort to notify Respondent of any excavation, drilling, or sampling at least five (5) working days before such activity, but in no event less than 24 hours before such activity. Upon Respondent's verbal request, DEQ shall make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ. DEQ shall provide Respondent with copies of all analytical data from such samples as soon as practicable.

E. Quality Assurance

(1) Respondent shall conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control (QA/QC) provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be approved by DEQ. Respondent shall require that each laboratory used by Respondent for analysis performs such

analyses in accordance with such provisions. Respondent shall also require that DEQ and its authorized representatives are allowed access at reasonable times to laboratories and personnel used by Respondent for sample analysis.

(2) In the event that DEQ conducts sampling or analysis in connection with this Consent Order, DEQ shall conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the DEQ-approved work plan.

Upon written request, DEQ shall provide Respondent with DEQ records regarding such sampling, transport, and analysis.

F. Records

(1) In addition to those reports and documents specifically required under this Consent Order, Respondent shall provide to DEQ within ten (10) days of DEQ's written request copies of QA/QC memoranda and audits, raw data, final drafts, final plans, reports, task memoranda, field notes, and laboratory analytical reports in its possession or control or in the possession or control of its employees, agents, or contractors.

(2) Respondent and DEQ shall preserve all records and documents in their respective possession or control or in the possession or control of their respective employees, agents, or contractors reasonably relating in any way to activities under this Consent Order, for at least six (6) years after termination under Section 9 of this Consent Order. Upon DEQ's request, subject to claim of privilege or confidentiality under Paragraphs 8.B.(3) or 8.F.(3), Respondent shall provide copies of such records to DEQ.

(3) Respondent may assert a claim of confidentiality regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Order, except that attorney-client and work product privileges may not be asserted with respect to any records required to be provided under Paragraph 8.F.(1). DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.

G. Progress Reports

During each quarter of this Consent Order, Respondent shall deliver to DEQ on or before the fifteenth (15) day following the end of the calendar quarter two (2) copies of a progress report containing:

- (1) Actions taken under this Consent Order during the previous quarter;
- (2) Actions scheduled to be taken in the next quarter;
- (3) Sampling, test results, and any other data generated by Respondent during the previous quarter; and
- (4) A description of any problems experienced during the previous quarter and actions taken to resolve them.

H. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all actions under this Consent Order shall be performed in accordance with applicable federal, state, and local laws and regulations.

(2) Without limiting the foregoing, all action under this Consent Order shall be performed in accordance with any applicable federal, state, and local laws and regulations related to archeological objects and sites and protection thereof. If archeological objects or human remains are discovered during any investigation, removal, or remedial activities at the Site, Respondent shall, at a minimum, (a) stop work immediately in the vicinity of the find, (b) provide any notifications required by ORS 97.745 and ORS 358.920, (c) notify the DEQ Project Manager within 24 hours of the discovery, and (d) use best efforts to ensure that Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. Respondent will direct any inquiry from the media or public regarding the discovery to the DEQ Project Manager. Any project delays caused by the discovery of archeological object or human remains will be considered a Force Majeure under Subsection 8.J of this Consent Order.

I. Reimbursement of DEQ Oversight Costs

(1) Upon request, DEQ will provide Respondent an estimate of future DEQ oversight costs associated with Respondent's implementation of this Consent Order. DEQ will submit to Respondent a monthly invoice of costs actually and reasonably incurred by DEQ in connection with any activities related to the oversight of Respondent's implementation of this Consent Order. DEQ shall maintain work logs, payroll records, receipts, and other records to document work performed and expenses incurred under this Consent Order and, upon request, shall make such

records available to Respondent for its inspection during the term of this Consent Order and for at least one year thereafter.

(2) DEQ oversight costs payable by Respondent will include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management and support costs of DEQ and of the Land Quality Division allocable to DEQ oversight of this Consent Order and not charged as direct, site-specific costs. Indirect costs will be based on a percentage of direct personal services costs.

(3) Within sixty (60) days of receipt of a DEQ invoice, Respondent either shall pay the amount of costs invoiced, by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund", or invoke dispute resolution under Subsection 8.L. Respondent shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest shall begin to accrue at the end of the 60-day payment period unless dispute resolution has been invoked. If dispute resolution is invoked, Respondent shall place the disputed funds in an FDIC insured interest bearing account. After the dispute is resolved, any payment determined to be owed to DEQ shall include the interest earned on that amount while in the FDIC insured interest bearing account. Any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, become a liquidated debt collectible under ORS chapter 293 and other applicable law.

J. Force Majeure

(1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this

Consent Order despite Respondent's due diligence (Force Majeure), Respondent shall promptly notify DEQ's Project Manager verbally of the cause of the delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent shall confirm in writing this information within five (5) working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation is due to Force Majeure, DEQ shall extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, or war. Economic hardship, normal inclement weather, and increased costs of performance shall not be considered Force Majeure.

K. DEQ Approvals

(1) Where DEQ review and approval is required for any plan or activity under this Consent Order, Respondent may not proceed to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. For purposes of this Consent Order, "day" means calendar day unless otherwise specified.

(2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ shall:

- (a) Approve the deliverable in whole or in part; or
- (b) Disapprove the deliverable in whole or in part and notify Respondent of deficiencies and/or request modifications to cure the deficiencies.
- (3) DEQ approvals, rejections, modifications, or identification of deficiencies shall be given as soon as practicable in writing and state DEQ's reasons with reasonable specificity.
- (4) In the event of DEQ disapproval or request for modification, Respondent shall correct the deficiencies and resubmit the revised report or other item for approval within thirty (30) days of receipt of the DEQ notice or within such other time as specified in the DEQ notice.
- (5) In the event a deficiency identified by DEQ is not addressed by Respondent in good faith in the revised deliverable, DEQ may modify the deliverable to cure the deficiency.
- (6) In the event of approval or modification of the deliverable by DEQ, Respondent shall implement the action required by the plan, report, or other item, as so approved or modified, or, as to any DEQ modifications, invoke dispute resolution under Subsection 8.L.

L. Dispute Resolution

- (1) In the event Respondent disagrees with DEQ regarding additional work directed by DEQ under Paragraph 6.D.(2), DEQ costs billed under Subsection 8.I, or DEQ modifications of a deliverable under Subsection 8.K, Respondent shall notify DEQ in writing of its objection, within thirty (30) days after issuance of the disputed monthly invoice or within fourteen (14) days of notice of the DEQ modification or DEQ-

directed additional work. DEQ and Respondent then shall make a good-faith effort to resolve the disagreement within fourteen (14) days of Respondent's written objection. At the end of the fourteen (14)-day period, DEQ shall provide Respondent with a written statement of its position from the applicable DEQ Region's Cleanup Manager. If the disagreement remains, DEQ and Respondent upon mutual agreement may refer the matter for independent review to a qualified and neutral fact finder acceptable to each party pursuant to mutually-agreed procedures. If necessary, within fourteen (14) days of conclusion of the independent review or receipt of DEQ's position from the Cleanup Manager, as applicable, Respondent shall provide its position and rationale in writing to the DEQ Regional Administrator. The Regional Administrator may discuss the disputed matter with Respondent and, in any event, shall provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's final position. DEQ's final position regarding the disputed matter is enforceable under this Consent Order.

(2) Respondent's invocation of dispute resolution under Paragraph (1) of this Subsection shall not excuse or delay Respondent's performance of work unrelated to the disputed matter.

M. Stipulated Penalties

(1) Subject to Subsections 8.J. and 8.L., upon any violation by Respondent of any requirement of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent shall pay the stipulated penalties set forth in the following schedule:

(a) Up to \$5,000 for the first week of violation or delay and up to \$2,500 per day of violation or delay thereafter, for failure to provide access or records in accordance with Subsection 8.B. or 8.F.

(b) Up to \$2,500 for the first week of violation or delay and up to \$1,000 per day of violation or delay thereafter, for:

(i) failure to submit a final work plan, addressing in good faith DEQ's comments on the draft work plan or incorporating DEQ modifications to the work plan, in accordance with the SOW's schedule and terms;

(ii) failure to perform work in accordance with an approved work plan's schedule and terms;

(iii) failure to perform additional work required by DEQ under Subsection 6.B.; or

(iv) failure to submit a final report, addressing in good faith DEQ's comments on the draft report or incorporating DEQ modifications to the report, in accordance with an approved work plan's schedule and terms.

(c) Up to \$500 for the first week of violation or delay and up to \$500 per day of violation or delay thereafter, for:

(i) failure to submit a good faith draft work plan in accordance with the SOW's schedule and terms;

(ii) failure to submit progress reports in accordance with Subsection 8.G.; or

(iii) any other violation of the Consent Order, SOW, or an approved work plan.

(2) Within 30 days of receipt of DEQ's written notice of violation, Respondent either shall pay the amount of such stipulated penalty assessed, by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund", or request a contested case regarding the penalty assessment in accordance with Paragraph 8.M.(3). Respondent shall pay simple interest of 9% per annum on the unpaid balance of any undisputed stipulated penalties, which interest shall begin to accrue at the end of the 30-day payment period. If dispute resolution is invoked, Respondent shall place the disputed funds in an FDIC insured interest bearing account. After the dispute is resolved, any payment determined to be owed to DEQ shall include the interest earned on that amount in the FDIC insured interest bearing account. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS chapter 293 and other applicable law.

(3) In assessing a penalty under this Subsection, the DEQ Director may consider the factors set forth in OAR 340-012-045. Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340 Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2 of this Consent Order; must be limited to the occurrence or non-occurrence of the alleged violation and may not review the amount of the penalty assessed. Penalties may not accrue pending any contested case regarding the alleged violation. Violations arising out of the same facts or circumstances or based on the same deadline are considered as one violation per day.

N. Enforcement of Consent Order and Reservation of Rights

(1) In lieu of stipulated penalties under Subsection 8.M., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties may not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order after thirty (30) days written notice to Respondent or court enforcement of this Consent Order.

(2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations made by DEQ under this Consent Order.

(3) Subject to Subsection 2.F., nothing in this Consent Order prevents Respondent from exercising any rights of contribution or indemnification Respondent might have against any person regarding activities under this Consent Order.

O. Indemnification

(1) Respondent shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Consent Order by Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.

(2) To the extent permitted by Article XI Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon shall save and hold harmless Respondent and its officers, employees, contractors, and agents, and indemnify the foregoing, from and against all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or authorized representatives (excepting acts or omissions constituting DEQ approval of Respondent's activities under this Consent Order). Respondent shall not be considered a party to any contract made by DEQ or its authorized representatives in carrying out activities under this Consent Order.

P. Parties Bound

This Consent Order is binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. No change in ownership or corporate or partnership status relating to the facility shall in any way alter Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ. Respondent shall notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Site during the term of this Consent Order.

Q. Modification

DEQ and Respondent may modify this Consent Order by mutual written agreement.

R. Effective Date

The effective date of this Consent Order shall be the date of signature by the DEQ Northwest Region Administrator.

9. Duration

This Consent Order is deemed satisfied upon completion of work required under this Consent Order and payment by Respondent of any outstanding oversight costs and penalties. DEQ shall determine whether work under this Consent Order is satisfactorily completed and the Consent Order terminated, by letter issued within 60 days of receipt of the last deliverable required from Respondent under this Consent Order, or as soon thereafter as reasonably practicable. If DEQ determines that the Consent Order is not satisfactorily completed, the letter shall set forth the specific bases for its determination.

10. Signatures

STIPULATED, AGREED, and APPROVED for issuance:

Arkema Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Stan Beisert  
President  
Legacy Site Services LLC, agent for Arkema Inc.

STIPULATED, AGREED, and so ORDERED:

State of Oregon  
Department of Environmental Quality

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
Nina DeConcini  
Northwest Region Administrator