

US EPA ARCHIVE DOCUMENT

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

_____	)	Docket No. TSCA-09-2012-000 <u>09</u>
In the Matter of:	)	
	)	
Chemical Waste Management, Inc.,	)	CONSENT AGREEMENT
	)	AND FINAL ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 and 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”) and Chemical Waste Management, Inc. (“Respondent”) agree to settle this case initiated under the Toxic Substances Control Act (“TSCA” or the “Act”), 15 U.S.C. §§ 2601 et seq., and consent to the entry of this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to section 16(a) of the Toxic

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Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties. 40 C.F.R. Part 22.

2. The Complainant is the Director of the Waste Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Director of the Waste Division.
3. Respondent is a Delaware corporation that owns and operates a solid and hazardous waste disposal facility located near Kettleman City, California (the “Facility”).

#### B. STATUTORY AND REGULATORY AUTHORITIES

4. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), establishes requirements for handling and disposal of polychlorinated biphenyls (“PCBs”).
5. Section 15 of TSCA, 15 U.S.C. § 2614, provides that “[i]t shall be unlawful for any person to (1) fail or refuse to comply with . . . (B) any requirement prescribed by section 2604 or 2605 [section 6 of TSCA] of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title. . . .”
6. EPA has issued comprehensive regulations governing manufacturing, processing, distribution, and disposal of PCBs at 40 C.F.R. Part 761. Part 761 applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.
7. Under 40 C.F.R. § 761.75(a), “[a] chemical waste landfill used for the disposal of PCBs and PCB Items shall be approved by the EPA Regional Administrator pursuant to

- paragraph (c) of this section. . . . In addition, the landfill shall meet any other requirements that may be prescribed pursuant to paragraph (c)(3) of this section.”
8. Under 40 C.F.R. § 761.75(c)(3)(ii), “in addition to the requirements of paragraph (b), the Regional Administrator may include in the approval any other requirements or provisions that the Regional Administrator deems necessary to ensure that the operation of the chemical waste landfill does not present an unreasonable risk of injury to health or the environment from PCBs.”
  9. Section 16 of TSCA, 15 U.S.C. § 2615, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 15 of TSCA shall be liable to the United States for a civil penalty in an amount not to exceed \$37,500 for each such violation that occurred after January 12, 2009.

### C. ALLEGED VIOLATION

10. Respondent is a “person” as that term is defined by 40 C.F.R. § 761.3.
11. On May 19, 1992, EPA Region IX issued an approval (the “Approval”) to Respondent pursuant to section 6(e) of TSCA, 15 U.S.C. § 2605(e), and 40 C.F.R. § 761.75. The Approval authorized Respondent to construct and operate Landfill B-18 (“B-18”) to dispose of non-liquid PCB wastes.
12. At all times relevant to this action, Condition G of the Approval provided: “[a]ll collected leachate, accumulated precipitation, and run-on from Landfill B-18 shall be managed pursuant to Conditions C.1 and C.2, and Attachment C. Leachate, regardless of PCB concentration, shall be stored in tanks, containers, or vacuum trucks as specified in

Attachment C, before discharge to surface impoundments, before transport to an incineration facility, and prior to being chemically stabilized or containerized.”

13. At all times relevant to this action, Attachment C of the Approval required Respondent to store all leachate and run-on removed from B-18 in above-ground tanks, containers, or vacuum trucks for no more than 90 calendar days. Attachment C also provided that “[t]o determine how the contents of each aforementioned tank, container, or vacuum truck shall be managed, the Permittee shall obtain a sample(s) from each tank, container, or vacuum truck which is representative of all liquids stored herein. The Permittee shall analyze each sample for PCBs.” If a sample indicated any concentration of PCBs at or above 50 milligrams per liter (“mg/l”), Respondent was required to dispose of the leachate and run-on by incineration in compliance with 40 C.F.R § 761.60(a) and 40 C.F.R. § 761.70. If a sample indicated any concentration of PCBs below 50 mg/l, the leachate and run-on could be discharged to a surface impoundment.
14. On May 9, 2012, Respondent released leachate from B181B tank at B-18 to a surface impoundment without sampling and analyzing the leachate for PCBs.
15. On May 11, 2012, Respondent sampled the remaining leachate in B181B tank at B-18 and sent it to a laboratory for analysis.
16. On May 16, 2012, Respondent received the laboratory analysis indicating non-detection of PCBs in the leachate collected from B181B tank at B-18 on May 11, 2012.
17. Respondent reported its failure to sample the leachate in B181B tank at B-18 on May 9, 2012 to EPA by a voice mail on May 11, 2012 and a letter dated May 23, 2012.
18. On or about May 9, 2012, Respondent failed to sample and analyze the leachate in B181B

tank for PCBs in violation of Condition G and Attachment C of the Approval, 40 C.F.R. § 761.75(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

19. Under the Polychlorinated Biphenyls Penalty Policy, dated April 9, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the single violation cited above would merit an unadjusted, gravity-based civil penalty of THIRTY-SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$37,500), given the nature, circumstances, and extent of the violation alleged.

#### D. RESPONDENT'S ADMISSIONS

20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.D of this CAFO; (iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### E. AUDIT POLICY

21. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit Policy") has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment and reducing transaction costs associated with violations of the laws EPA is charged with administering. If certain specified criteria are met, reductions in gravity-based penalties

of up to 100% are available under the Audit Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation. If all of the above criteria are met except for the first, systematic discovery of the violation(s) through an environmental audit or compliance management system, reductions in gravity-based penalties of 75% are available under the Audit Policy.

22. Complainant has determined that Respondent has satisfied all of the criteria under the Audit Policy except for the first, systematic discovery of the violation(s) through an environmental audit or compliance management system, and thus qualifies for a 75% reduction in gravity-based civil penalties in this matter. Accordingly, the civil penalty assessed in this matter is NINE THOUSAND THREE HUNDRED AND SEVENTY FIVE DOLLARS (\$9,375).
23. Complainant's finding that Respondent has satisfied all of the criteria under the Audit Policy except the first, systematic discovery of the violation(s) through an environmental audit or compliance management system, is based upon documentation that Respondent has provided to Complainant to establish that it satisfies these criteria. Complainant and Respondent agree that, should any material fact upon which Complainant relied in making its finding subsequently prove to be other than as represented by Respondent, this CAFO may be voided in whole or in part.

F. CIVIL ADMINISTRATIVE PENALTY

24. Respondent hereby consents to the assessment of a civil penalty in the amount of NINE THOUSAND THREE HUNDRED AND SEVENTY FIVE DOLLARS (\$9,375) as full, final, and complete settlement of the civil claim alleged in Section I.C of the CAFO. The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

David H. Kim  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

25. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

26. If Respondent fails to pay the civil administrative penalty specified in Paragraph 24 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA the stipulated penalty of TWELVE THOUSAND DOLLARS (\$12,000) instead of the specified civil administrative penalty. Complainant also reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with TSCA and the implementing regulations.
27. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
  - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,

penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in Paragraph 24. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### G. STANDARD DIVISION PRACTICE

28. Within thirty (30) days of the entry of this CAFO, Respondent shall implement the Standard Division Practice ("SDP") set forth as an Attachment to this CAFO. The SDP contains procedures for transferring leachate from the leachate tank after sampling the leachate for the presence of PCBs. The SDP shall be implemented for one year from the first date of implementation, and any modification(s) to the SDP during the one-year implementation period shall be submitted in writing to EPA for approval prior to implementation.

29. Respondent shall maintain all waste transfer logs used to track any sampling and transfer of leachate from the tanks covered by the SDP for one year from the first date of implementation of the SDP.
30. If Respondent fails to comply with Paragraphs 28 and/or 29 of this CAFO, Respondent shall pay to EPA the stipulated penalty of \$500 per occurrence.

#### H. RETENTION OF RIGHTS

31. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.
32. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### I. ATTORNEYS' FEES AND COSTS

33. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

J. EFFECTIVE DATE

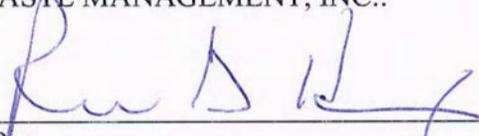
34. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

K. BINDING EFFECT

35. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
36. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT CHEMICAL WASTE MANAGEMENT, INC.:

9/4/12  
DATE

  
By: ROBERT G. HENRY  
Title: VICE PRESIDENT  
Address: CHEMICAL WASTE MANAGEMENT, INC.  
35251 OLD SKYLINE ROAD  
KETTLEMAN CITY, CA 93239

FOR COMPLAINANT EPA REGION IX:

9/5/12  
DATE

  
Jeff Scott

Director  
Waste Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

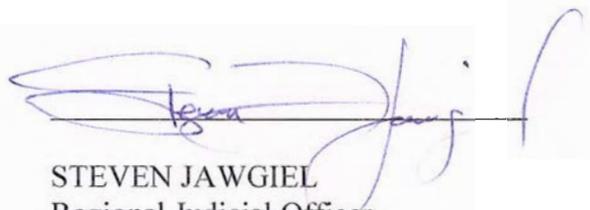
II. FINAL ORDER

EPA Region IX and Chemical Waste Management, Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2012-000~~9~~) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$9,375 and otherwise comply with the terms set forth in the Consent Agreement.

09/06/12

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Robert G. Henry  
Director of Operations  
Chemical Waste Management, Inc.  
P. O. Box 471  
Kettleman City, CA 93239

Andrew M. Kenefick, Esq.  
Senior Legal Counsel  
Waste Management  
720 4<sup>th</sup> Avenue, Suite 400  
Kirkland, WA 98033

Dated: Sept. 7, 2012

By: Steven Armsey

for Bryan Goodwin  
U.S. Environmental Protection Agency, Region IX

## **Attachment**

### **Standard Division Practice**

KETTLEMAN HILLS FACILITY	
Title: Procedure for the Transfer of Leachate from TSCA Permitted Landfill Units	Number: TSCA - 900
Approver's Title:	Change Number: 0
Signature:	Date:

**1.0 PURPOSE:**

*The intent of this Standard Division Practice (SDP) is to establish standardized procedures for transferring leachate from the leachate tanks at B18 and B19 (excluding Tank B19 IA), utilizing a Waste Transfer Log (WTL) and a Leachate Tank Verification Tag (LTVT).*

**2.0 SCOPE:**

*This SDP will cover systematic procedures to facilitate the proper transfer of leachate from Landfill B18 (Phases IA, IIA, IB and IIB) and Landfill B19 (Phases IB, II and III) at the Kettleman Hills Facility.*

**3.0 USER:**

- 3.1. *Lead Site Maintenance Mechanic*
- 3.2. *Site Maintenance Mechanic*
- 3.3. *Environmental Management Department (EMD) Technician – Groundwater*
- 3.4. *Environmental Management Department (EMD) Technician – Inspector*
- 3.5. *Lead Environmental Management Department (EMD) Technician*
- 3.6. *Lab/Receiving Manager*
- 3.7. *Chemist*
- 3.8. *Receiving Technician*
- 3.9. *Lead DSU Technician*
- 3.10. *DSU Technician*
- 3.11. *Waste Tracking Clerk*

**4.0 DOCUMENTATION/FORMS:**

- 4.1. *KHF Waste Transfer Log (WTL)*
- 4.2. *KHF Leachate Tank Verification Tag (LTVT)*

**5.0 UNIQUE PROTECTIVE EQUIPMENT:**

- 5.1. *Refer to Health and Safety Manual HS-1161*

**6.0 SPECIALIZED EQUIPMENT, TOOLS, AND SUPPLIES:**

- 6.1. *Vacuum Truck*
- 6.2. *55 gallon drum*
- 6.3. *Tote*

**7.0 DISPOSAL OF LEACHATE TANKS THAT MAY CONTAIN PCBs:**

*The following systematic procedure will explain the specific steps to be followed when using a Waste Transfer Log (WTL) and a Leachate Tank Verification Tag (LTVT) to transfer leachate from a tank to its pre-determined disposal area.*

- 7.1. *Landfill Tanks:*      *B18 (IA)*      *B18 (IIA)*      *B18 (IB)*      *B18 (IIB)*  
   *B19(1B)*      *B19(II)*      *B19 (III)*

7.2. *Steps initiated prior to tank transfer:*

7.2.1. *Prior to any transfer activities a blank LEACHATE TANK VERIFICATION TAG must be affixed to any leachate tank identified in 7.1.*

7.2.2. *The Environmental Technician upon arrival at a leachate tank will initiate the generation of a Waste Transfer Log that is specific to the tank being sampled, and fills out the top portion of the LEACHATE TANK VERIFICATION TAG by filling in the date and time of the sample, name of the sampler, the WTL number, and the WTL Tank Location. The Environmental Technician will then sample, per SDP ET-202, the leachate in the tank prior to the leachate being disposed or stored; he/she then replaces the tag to the original tag location. (See Diagram #3). The WTL follows the sampled tank from the initial sampling to the authorized disposal or storage location.*

7.2.3. *In accordance with the facility Waste Analysis Plan (WAP), the sample is subjected to the mandatory analysis (fingerprint) plus any required*

compatibility testing. Additionally the sample is analyzed for PCBs per the TSCA Permit requirements. The Lab/Receiving Manager or Chemist will evaluate the results and determine if the waste conforms to the profile and the waste management decision (WMD). If the results conform to the profile and WMD, the Lab/Receiving Manager or Chemist will write the disposal Unit location on the WTL<sup>3</sup> (See Diagram #1). The laboratory retains a copy of the WTL. The Lab communicates with Maintenance to initiate the transfer of the leachate to the authorized disposal or storage location. If the results do not confirm with the profile and/or the WMD then the Lab will contact Management for direction. If PCBs are detected contact Management prior to any movement of the waste.

- 7.2.4. The Lab gives Maintenance the original WTL (Diagram #1) that provides the location of the leachate tank. The WTL also provides the overall analytical results, profile numbers, and the generator.
- 7.2.5. With the WTL in hand Maintenance will proceed to the tank that requires emptying as indicated on the WTL. See Diagram #1, WTL top, middle of page<sup>1</sup> and column "moved from"<sup>2</sup> for the identification of the location.
- 7.2.6. **WARNING: Upon arrival at the location, double check the location by visually recognizing and verifying:**
- **The Tank Location number as written on the tank (Diagram #3) and as written on the LEACHATE TANK VERIFICATION TAG (Diagram #2) and the Waste Transfer Log (Diagram #1, item 1).**
  - **Additionally compare the LEACHATE TANK VERIFICATION TAG WTL # (Diagram #2) to the Waste Transfer Log Tracking # (Diagram #1)**
  - **Should there be any question regarding the location contact the Lab and/or the Lead EMD Technician to verify the location.**
  - **Confirm that the upper portion of the LTVT is not blank and has been completed per Section 7.2.2. If the upper portion of the LTVT is blank, do not pump the tank. Contact the Lead EMD Technician and/or the Lab to verify the tank status**
- 7.2.7. Confirm that all the information in 7.2.6 above is correct and complete.
- 7.2.8. Perform routine inspection and services of all valves, piping, controls, and appurtenant structures.
- 7.2.9. Connect the hose from the tank to the vacuum truck or totes/drums and initiate the pumping sequence.
- 7.2.10. Upon completion of the waste transfer, sign and date the WTL and the information on the LTVT required to be completed by Maintenance.



DIAGRAM #2 LEACHATE TANK VERIFICATION TAG

**LEACHATE TANK VERIFICATION TAG  
(LTVT)**

**Completed by Environmental Technician upon Sampling Tank:**

DATE \_\_\_\_\_ TIME \_\_\_\_\_

Waste Transfer Log (WTL) # \_\_\_\_\_

WTL Tank Location # \_\_\_\_\_

Completed by \_\_\_\_\_

**DO NOT START** WASTE TRANSFER IF THE INFORMATION ABOVE HAS NOT BEEN COMPLETED OR THE TANK HAS NOT BEEN APPROVED FOR WASTE TRANSFER.

**DO NOT REMOVE THIS TAG UNTIL:**

Prior to removing contents, confirm the Waste Transfer Log # and the WTL Tank Location # are the same as on both the WTL and this affixed Tag.

**Completed by Maintenance upon Pumping Tank:**

DATE \_\_\_\_\_ TIME \_\_\_\_\_

Waste Transfer Log (WTL) # \_\_\_\_\_

WTL Tank Location # \_\_\_\_\_

Completed by \_\_\_\_\_

*Diagram #3 Leachate Tank*



**POTENTIAL LOCATION OF LEACHATE TANK  
VERIFICATION TAG**

**Tank Location Number**