BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	Docket Number TSCA-HQ-2013-5003
Kemira Water Solutions, Inc. Atlanta, Georgia	)	
Respondent	)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Kemira Water Solutions, Inc. (Respondent), located at 1000 Parkwood Circle, Suite 500, Atlanta, Georgia 30339, (collectively, the Parties), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. To avoid the disruption of orderly business activities and expense of protracted and costly litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order.

3. The Respondent waives any defenses it might have as to jurisdiction.

II. EPA's FINDINGS OF FACT AND LAW

COUNTS 1-6

4. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), authorizes the promulgation of rules by EPA under which each person who manufactures a chemical substance must maintain records and "submit to the Administrator such reports, as the Administrator may reasonably require, ..."

5. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

6. Pursuant to 40 C.F.R. § 710.3, "person" means "any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, and interstate body and any department, agency, or instrumentality of the Federal Government."

7. "Manufacture is defined by section 3(7) of TSCA, 15 U.S.C. § 2602(7), as "to import into the customs territory of the United States…, produce, or manufacture."

8. A "chemical substance" is defined by section 3(2)(A) of TSCA, 15 U.S.C. §2602(2)(A), as "any organic or inorganic substance of a particular molecular identity…."

9. Pursuant to 40 C.F.R. § 710.48(a), unless an exclusion applies, "[a]ny person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340 kilograms) or more of a chemical substance [which is listed on the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to reporting."
10. A person subject to 40 C.F.R. § 710.48(a) is required to file a Partial Updating of the TSCA Inventory Data Base Site Report (Form U) with the EPA pursuant to 40 C.F.R. § 710.59.
11. The deadline for Form U submissions for the 2006 IUR period was March 23, 2007, *see* 40 C.F.R. § 710.53.
12. Respondent is a "person" as defined in 40 C.F.R. § 710.3 and as such is subject to TSCA and the regulations promulgated thereunder.
13. Respondent "manufactures" a "chemical substance," as defined above in Paragraphs 7 and 8.
14. Respondent is a corporation that owns or controls a facility located at 316 Bartow Municipal Airport, Bartow, FL, 33830.
15. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 14:

    Chemical #1: Sulfuric Acid, Iron (3+) Salt (3:2) (CASN 10028-22-5)
    Chemical #2: Sulfuric Acid, Iron (2+) Salt (1:1) (CASN 7720-78-7)
    Chemical #3: Iron Chloride ($FeCl_3$) (CASN 7705-08-0)
    Chemical #4: Sulfuric Acid, Aluminum Salt (3:2) (CASN 10043-01-3)
    Chemical #5: Aluminate (AlO_2), Sodium (1:1) (CASN 1302-42-7)
    Chemical #6: Aluminum Chloride Hydroxide Sulfate (CASN 39290-78-3)

16. The chemical substances listed in paragraph 15 above are included in the TSCA Master Inventory File.

17. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 15 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

18. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

19. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 7-8

20. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

21. Respondent is a corporation that owns or controls a facility located at 3761 Canal Street, East Chicago, IN, 46312.

22. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 21:

    Chemical #7: Iron Chloride ($Fe\ Cl_3$) (CASN 7705-08-0)
    Chemical #8: Iron Chloride ($FeCl_2$) (CASN 7758-94-3)

23. The chemical substances listed in paragraph 22 above are included in the TSCA Master Inventory File.

24. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 22 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

25. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

26. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 9-11

27. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

28. Respondent is a corporation that owns or controls a facility located at 14000 San Bernardino Avenue, Fontana, CA, 92335.

29. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 28:

    Chemical #9: Iron Chloride ($FeCl_3$) (CASN 7705-08-0)
    Chemical #10: Iron Chloride ($FeCl_2$) (CASN 7758-94-3)
    Chemical #11: Sulfuric Acid, Iron (3+) Salt (3:2) (CASN 10028-22-5)

30. The chemical substances listed in paragraph 29 above are included in the TSCA Master Inventory File.

31. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 29 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

32. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

33. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 12-13

34. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

35. Respondent is a corporation that owned or controlled a facility located at 8701 Park Place Boulevard, Houston, TX, 77017 during the 2006 IUR period.

36. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 35:

    Chemical #12: Sulfuric Acid, Iron (3+) Salt (3:2) (CASN 10028-22-5)
    Chemical #13: Sulfuric Acid, Iron (2+) Salt (1:1) (CASN 7720-78-7)

37. The chemical substances listed in paragraph 36 above are included in the TSCA Master Inventory File.

38. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 36 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

39. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

40. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 14-15

41. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

42. Respondent is a corporation that owns or controls a facility located at 18700 Highway 14 North, Mojave, CA, 93501.

43. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 42:

    Chemical #14: Iron Chloride ($FeCl_3$) (CASN 7705-08-0)
    Chemical #15: Iron Chloride ($FeCl_2$) (CASN 7758-94-3)

44. The chemical substances listed in paragraph 43 above are included in the TSCA Master Inventory File.

45. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 43 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

46. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

47. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 16-20

48. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

49. Respondent is a corporation that owns or controls a facility located at 100 Elba Island Road, Savannah, GA, 31404.

50. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 49:

    Chemical #16: Sulfuric Acid, Aluminum Salt (3:2) (CASN 10043-01-3)
    Chemical #17: Aluminum Chloride, Basic (CASN 1327-41-9)
    Chemical #18: Aluminum Chloride Hydroxide Sulfate (CASN 39290-78-3)
    Chemical #19: Aluminate (AlO_2), Sodium (1:1) (CASN 1302-42-7)
    Chemical #20: Aluminum Hydroxide ($Al(OH)_3$) (CASN 21645-51-2)

51. The chemical substances listed in paragraph 50 above are included in the TSCA Master Inventory File.

52. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 50 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

53. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

54. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 21-23

55. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

56. Respondent is a corporation that owns or controls a facility located at 10 Bremen Street, St. Louis, MO, 63147.

57. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 56:

    Chemical #21: Iron Chloride ($FeCl_3$) (CASN 7705-08-0)
    Chemical #22: Iron Chloride ($FeCl_2$) (CASN 7758-94-3)
    Chemical #23: Sulfuric Acid, Iron (3+) Salt (3:2) (CASN 10028-22-5)

58. The chemical substances listed in paragraph 57 above are included in the TSCA Master Inventory File.

59. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 57 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

60. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

61. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 24-27

62. Paragraphs 4 through 13 are re-alleged and incorporated herein by reference.

63. Respondent is a corporation that owns or controls a facility located at 2315 N. Sullivan Road, Spokane, WA, 99216.

64. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at its Spokane, Washington facility:

    Chemical #24: Aluminum Chloride, Basic (CASN 1327-41-9)
    Chemical #25: Sulfuric Acid, Aluminum Salt (3:2) (CASN 10043-01-3)
    Chemical #26: Aluminum Chloride Hydroxide Sulfate (CASN 39290-78-3)
    Chemical #27: Aluminum Chloride ($AlCl_3$) (CASN 7446-70-0)

65. The chemical substances listed in paragraph 64 above are included in the TSCA Master Inventory File.

66. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 64 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

67. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

68. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

69. The proposed penalty in this matter is consistent with the *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999) (*TSCA ERP*). The *TSCA ERP* was developed in accordance with the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980). The *TSCA ERP*, though not a regulation, establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

70. The proposed civil penalty in this case reflects: (1) a determination of the gravity-based penalty (GBP), in accordance with the statutory factors nature, circumstances, extent and gravity; and (2) adjustments to the GBP, taking into account the statutory factors ability to pay, effect on ability to continue business, prior violations, culpability, and such other matters as justice may require.

71. The GBP is determined by evaluating the nature, circumstances, and extent of the violation. In accordance with the *TSCA ERP*, the nature of the violations set forth in Counts 1 – 27 is "Hazard Assessment," the circumstance level is "Level 1" and the extent level is "Significant." The gravity factor is determined by the value at which, on the *TSCA ERP's* GBP Matrix (page 8), the "circumstances" factor (vertical axis) intersects the "extent" factor (horizontal axis).

72. In accordance with the *TSCA ERP*, the GBP for Counts 1 – 27 ($21,922[1] x 27) is $591,894.

73. For purposes of settlement, pursuant to section 16(a) of TSCA and the *TSCA ERP*, EPA has reduced the GBP by fifteen percent (15%) to reflect other relevant factors, such as the Respondent's cooperation and general attitude with regard to compliance with TSCA. EPA has, therefore, determined that an appropriate and fair civil penalty to settle this action is $503,110.

IV. TERMS OF SETTLEMENT

74. This settlement resolves only the civil administrative claims alleged in Section II of this Consent Agreement, which are the sole claims alleged by EPA as a result of EPA's January 18, 2012 inspection of Respondent and information provided by Respondent to EPA in response to supplemental information requests following the inspection.

75. Respondent waives its right to request an administrative hearing pursuant to section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and waives its right to file a petition for judicial review of the Final Order assessing the civil penalty pursuant to section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).

[1] The ERP matrix penalty amount has been increased pursuant to the Debt Collection Improvement Act of 1996, Civil Monetary Inflation Adjustment Rule, 69 Fed. Reg. 7,121 (February 13, 2004), codified at 40 C.F.R. Parts 19 and 27.

76. Respondent neither admits nor denies the allegations.

77. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 8 and 15 of TSCA; 15 U.S.C. §§ 2607 and 2614.

78. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.

79. Respondent agrees to pay a civil penalty in the sum of **Five Hundred Three Thousand One Hundred Ten Dollars ($503,110)** in accordance with the following terms:

A. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "Kemira Water Solutions, Inc., Civil Penalty Docket No. TSCA-HQ-2013-5003," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2013-5003
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Kemira Water Solutions, Inc., Civil Penalty Docket No. TSCA-HQ-2013-5003" by using the following instructions:

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

B. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division (2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Room No. 5041-A)
Washington, DC 20460
(202) 564-4167 Fax (202) 564-0035

C. If Respondent fails to make the payment in a timely manner as required by paragraph 80.A, then Respondent shall pay a stipulated penalty of One Thousand Dollars ($1,000.00) per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.

V. OTHER MATTERS

80. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign and consent to this Agreement.

81. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board and shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns.

82. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted any documentation required by the Consent Agreement and Final Order.

83. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by the EPA Environmental Appeals Board.

84. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.

85. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

86. The Parties agree to bear their own costs.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Kemira Water Solutions, Inc., Docket No. TSCA-HQ-2013-5003.

For Respondent:

[redacted]

Joseph W. Richey
President
Kemira Water Solutions, Inc.
1000 Parkwood Circle, Suite 500
Atlanta, GA 30339

12/5/2012
DATE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Kemira Water Solutions, Inc., Docket No. TSCA-HQ-2013-5003.

For Complainant:

[redacted]

Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

12-27-12
DATE

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

Filed
JAN - 9 2013
Clerk, Environmental Appeals Board
INITIALS

In re:	)	
	)	
	)	
Kemira Water Solutions, Inc.	)	Docket No. TSCA-HQ-2013-5003
Atlanta, Georgia	)	
	)	
	)	
	)	

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So Ordered.[1]

Date: January 8, 2013

[redacted]
Catherine R. McCabe
Judge, Environmental Appeals Board

[1] The two-member panel ratifying this matter is composed of Environmental Appeals Judges Catherine R. McCabe and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Final Order in the Matter of: Kemira Water Solutions, Inc., Docket No. TSCA-HQ-2013-5003, were sent to the following persons in the manner indicated:

By Pouch Mail:

Morgan E. Rog
Waste and Chemical Enforcement Division (Mail Code 2249A)
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-7109

By First Class U.S. Mail:

Joseph W. Richey
President
Kemira Water Solutions, Inc.
1000 Parkwood Circle, Suite 500
Atlanta, GA 30339

Angela J. Levin
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street N.E.
Atlanta, GA 30308

[redacted]

Annette Duncan, Secretary
Environmental Appeals Board (Mail Code 1103B)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001