BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-06-2025-0910
Denka Performance Elastomer, LLC	)	**CONSENT AGREEMENT**
Respondent	)	

I. PRELIMINARY STATEMENT

1.1. This Consent Agreement is entered by the United States Environmental Protection Agency ("EPA" or "Complainant"), and Denka Performance Elastomer, LLC ("DPE" or "Respondent") under the authority vested in the EPA by Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), concerning Respondent's facility located in LaPlace, Louisiana.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Louisiana final authorization to carry out its hazardous waste program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally approved State of Louisiana's hazardous waste program.

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to the Louisiana Department of Environmental Quality ("LDEQ").

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties"

("Consolidated Rules of Practice"), 40 Code of Federal Regulations ("C.F.R.") Part 22, EPA issues, and Denka Performance Elastomer, LLC ("DPE" or "Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. JURISDICTION

2.1. In accordance with 40 C.F.R. § 22.13(b) and § 22.18(b)(2) of the Consolidated Rules of Practice, issuance of this Consent Agreement commences this proceeding which will conclude when the Final Order becomes effective.

2.2. The Regional Administrator, EPA Region 6 ("Complainant") has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign this Consent Agreement and has further redelegated the authority to the Director of the Enforcement and Compliance Assurance Division.

2.3. Respondent agrees to undertake and complete all actions required by the terms and conditions of this Consent Agreement.

2.4. This Consent Agreement contains concise statements of the factual and legal basis for EPA's alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged by EPA to have violated.

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

3.1. LDEQ is the designated state agency to implement the authorized RCRA program in the State of Louisiana.

3.2. The regulation at LAC 33:V.109 defines "person" as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, an interstate body or the federal government or any agency of the federal government.

3.3. The regulation at LAC 33:V.109 defines "operator" as whoever has legal authority and responsibility for a facility that generates, transports, treats, stores, or disposes of any hazardous waste.

3.4. The regulation at LAC 33:V.109, (40 C.F.R. § 260.10) defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed or whose act first causes a hazardous waste to become subject to regulation.

3.5. The regulation at LAC 33:V.1703 defines "equipment" as each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, flange, or other connector, and any control devices or systems required by Chapter 33.

3.6. The regulation at LAC 33:V.109, (40 C.F.R. § 260.10) defines a "tank" as a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

3.7. The regulation at LAC 33:V.109, (40 C.F.R. § 260.10) defines a "container" as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

3.8. The regulation at LAC 33:V.109, (40 C.F.R. § 260.10) defines "facility" to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

3.9. The regulation at LAC 33:V.109 defines "treatment" as any method, technique, or process, including neutralization, designed to change the physical or chemical character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste non-hazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

3.10. The regulation at LAC 33:V.109 defines "storage" as the containment of hazardous waste for such time as may be permitted by regulations in such a manner as not to constitute disposal of hazardous waste.

3.11. Pursuant to LAC 33:V.109, a "solid waste" is any discarded material that is not excluded by LAC 33:V.105.D.1 or that is not excluded by a variance or non-waste determination granted under LAC 33:V.105.K or O.

3.12. Pursuant to LAC 33:V.109, a material is "discarded" if it is abandoned (and not used, re-used, reclaimed, or recycled) by being disposed of; or burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of.

3.13. Pursuant to LAC 33:V.109, (40 C.F.R. § 261.2(b)), materials are "solid waste" if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

3.14. Pursuant to LAC 33:V.109, (40 C.F.R. § 261.2(c)), certain materials are "solid wastes" if they are recycled – or accumulated, stored, or treated before recycling where such materials are used in a manner constituting disposal.

3.15. "Hazardous waste" is defined at LAC 33:V.109, (40 C.F.R. § 261.3). A solid waste is a hazardous waste if it is not excluded from regulation, is a hazardous waste under LAC 33:V.105.D; and it exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903 and/or it is listed in LAC 33:V.4901 and has not been excluded from the lists in LAC 33:V.4901.

3.16. Pursuant to LAC 33:V.4903(B), (40 C.F.R. § 261.21(a)(1)), a "solid waste" that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number D001. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste is a liquid and has a flashpoint less than (<) 60 °C (140 °F) as determined by appropriate testing methods in the regulation, including Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78, as incorporated by reference in LAC 33:V.110 or SW-846 Test Method 1010B (Test Methods for Flash Point by Pensky-Martens Closed Cup Tester).

3.17. Pursuant to LAC 33:V.4903(B), (40 C.F.R. § 261.21(a)(2)), a "solid waste" that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number D001. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste is not a liquid and is capable, under standard temperature and pressure of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

3.18. Pursuant to LAC 33:V.4903(B), (40 C.F.R. § 261.21) and 85 FR 40594 (July 7, 2020) Modernizing Ignitable Liquids Determinations, a generator of a waste should consider the individual liquid phases of a multiple phase waste under the criteria in 40 C.F.R. § 261.21(a)(1) and non-liquid phases of a multiple phase waste under the criteria of 40 C.F.R. § 261.21(a)(2). Generators must consider testing and/or knowledge of individual phases of multiple phase wastes when any individual phase likely exhibits the ignitable characteristic and therefore may cause the entire waste to pose a risk of fire during treatment, storage, and/or disposal. A representative sample of the waste containing a separable liquid shall be of sufficient quantity to perform any one of the test methods in paragraph 3.16.

3.19. Pursuant to LAC 33:V.4903(D), (40 C.F.R. § 261.23) a "solid waste" that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number D003. A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the properties listed in LAC 33:V.4903(D).

IV. FINDINGS OF FACT

A. DPE Background

4.1. Respondent is a limited liability company formed in the State of Delaware and registered and authorized to do business in the State of Louisiana.

4.2. In 2015, Respondent purchased the Neoprene operations and business from E.I. DuPont de Nemours & Company ("DuPont").

4.3. Respondent is the operator of the Neoprene manufacturing operations at the Pontchartrain Works Site located at 560 Highway 44, LaPlace, Louisiana, 70068 in St. John the Baptist Parish ("the Site"). DuPont Specialty Products USA, LLC is the owner of the land at the Site on which DPE Neoprene manufacturing operations are located.

4.4. Respondent is a "person" as that term is defined by LAC 33:V.109.

4.5. Respondent is the "operator" of hazardous waste management units as that term is defined in LAC 33:V.109. On May 12, 2025, Respondent announced that it would be suspending the production of Neoprene and undertaking a mothball process. On August 14, 2025, DPE completed production of Neoprene from intermediate products already in inventory and DPE has not produced Neoprene since that date ("Suspension of Production").

4.6. Together, and solely for purposes of this Consent Agreement, all contiguous land, structures, other appurtenances, and improvements on the land leased by DPE and used for managing waste by DPE comprise the "Facility" as that term is defined in Section III, and in LAC 33:V.109, (40 C.F.R. § 260.10).

B. DPE's Permit and Hazardous Waste Treatment, Storage, and Disposal Operations

4.7. Respondent generated, treated, stored, and/or disposed of hazardous waste associated with hazardous waste management units at the Facility that are covered and identified in Respondent's Permit # LAR 001 000 009415-OP-1 issued by LDEQ with an effective date of July 14, 2016 ("Permit").

4.8. Respondent generated, treated, stored, and/or disposed of other waste streams that forms the basis for the allegations in this Agreement. These wastes and associated units are not covered or identified in Respondent's Permit.

4.9. On December 20, 2022, the parties agreed to a Consent Agreement and Final Order ("2022 Order") addressing the generation and management of the "Poly Kettle Strainer Waste" in the Polymerization Process Area ("Poly Building") of the Facility as described in Section IV.D.2. These wastes and associated units are not covered or identified in the Permit.

4.10. From November 2015 through the Suspension of Production, Respondent generated, handled, and treated the "Poly Kettle Strainer Waste" in the Poly Building of the Facility. EPA's allegation of a failure to identify the "Poly Kettle Strainer Waste" as a hazardous waste form the basis for the allegations in the 2022 Order noted below in Section IV.E.

4.11. From November 2015 through the Suspension of Production, Respondent also generated, handled, and treated chloroprene ("CD") and butadiene popcorn wastes in the Monomer Synthesis Area at the Facility. CD and butadiene popcorn wastes, and associated units, are not covered or identified in the Permit.

4.12. Prior to and as of the Effective Date of this CAFO, Respondent has been in compliance with the terms of the 2022 Order.

C. EPA's Information Gathering, Inspection, and Sampling Activities

4.13. On February 24, 2022, EPA issued a RCRA Section 3007 information request to Respondent pursuant to 42 U.S.C. § 6927 ("Request").

4.14. During March, April, and May 2022, Respondent submitted responses to the Request. The responses included waste profiles and corresponding analytical data for wastes generated at the Facility.

4.15. On April 18, 2022, through April 21, 2022, EPA and LDEQ conducted a RCRA Compliance Inspection of the Facility ("April 2022 Inspection"). Prior to this inspection, LDEQ conducted periodic RCRA inspections at Respondent's facility, including a Full Compliance Evaluation Inspection in 2021 in which no RCRA violations were noted, and most recently, Field inspections in 2023 in which minor RCRA violations were noted.

4.16. On May 5, 2022, EPA returned to the Site and conducted a RCRA sampling inspection ("May 2022 Sampling Inspection"). During the May 2022 Sampling Inspection, EPA collected a total of twelve (12) air, liquid, and solid samples.

4.17. During the May 2022 Sampling Inspection, EPA also recorded waste handling practices at the Facility, including how the Respondent generated and managed certain types of "Poly Kettle Strainer Waste."

4.18. On May 9-11, 2023, EPA conducted a RCRA Section 3007 case development inspection at the Facility ("May 2023 Inspection and Sampling Investigation"). EPA performed waste sampling onsite to collect samples for hazardous characterization analyses for "Poly Kettle Strainer Waste" generated in the Poly Building.

4.19. The liquid phase of "Poly Kettle Strainer Waste" samples collected during the May 2023 Inspection and Sampling Investigation was analyzed for flash point, resulting in a flashpoint less than (<) 60 °C (140 °F). These results are discussed further in Section IV.D.2.

4.20. The solid phase of the "Poly Kettle Strainer Waste" samples collected during the May 2023 Inspection and Sampling Investigation were analyzed for burn rate. None of the solid samples propagated combustion (SW-846 Test Method 1030 for Ignitability of Solids).

4.21. After the May 2023 Inspection and Sampling Investigation, EPA requested that Respondent provide further documents and information on operations related to the May 2023 Inspection and Sampling Investigation ("May 2023 Inspection and Sampling Request Letter"). Respondent provided its response on May 26, 2023.

D. DPE's Operations: Monomer Synthesis Area and Poly Building

4.22. Neoprene manufacturing at the Facility occurs within three main process areas, the Monomer Synthesis Area, the Poly Building, and the Finishing Area.

4.23. Neoprene (also known as polychloroprene) is a flexible, synthetic rubber used to produce consumer products like wetsuits, laptop sleeves, orthopedic braces, automotive belts and hoses, medical and military equipment, and clothing. Chloroprene is a liquid material that is used to produce Neoprene. Neoprene is manufactured in a three-step process. First, raw materials are reacted and refined over several steps to produce chloroprene. The chloroprene is then polymerized in a chemical reaction to produce an emulsion known as polychloroprene or Neoprene. Finally, dry Neoprene is processed into Neoprene chips based on customer specifications.

4.24. Chloroprene is a colorless, volatile organic compound (VOC) and a chlorinated hydrocarbon. Chloroprene's vapor density is about three times the density of air and its flash point is -4 degrees Fahrenheit. Chloroprene is a hazardous constituent under Louisiana's EPA-authorized regulations. LAC 33:V.3105, Table 1, (40 C.F.R. Part 261 Appendix VIII).

1. DPE's Monomer Synthesis Area

Monomer Popcorn Waste Generation

4.25. Respondent's chloroprene manufacturing process begins in the Monomer Synthesis Area at the Facility where raw materials react and are refined over several steps to produce chloroprene monomer.

4.26. Chloroprene monomer is extremely flammable with explosive atmospheres. Attributes include rapid polymerization reactions, chemical incompatibilities, and operator exposures. The hazards are potentially generated by deliberately or inadvertently concentrating and accumulating vapor and liquid chloroprene-containing materials.[1] Further, chloroprene is a highly volatile, flammable, and highly reactive (polymeric) chemical.[2]

4.27. During the production of chloroprene monomer, CD and butadiene popcorn[3] wastes are generated, treated, and stored in the Monomer Synthesis Area.

4.28. CD popcorn waste contains similar constituents to the "Poly Kettle Strainer Waste" generated in the Poly Building.

4.29. Butadiene popcorn waste contains butadiene, a hazardous chemical due to its flammability, toxicity, and reactivity. It can be easily ignited, and if polymerization occurs in a container, it may violently rupture.[4]

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[1] DPE Motion in Opposition to Preliminary Injunction, Exhibit 8 Declaration of Paul S. Casarez (July 18, 2023).
[2] DPE Petition for Review and Complaint for Declaratory and Injunctive Relief, Exhibit B Declaration of Christopher Meyers, P.E. (July 10, 2024).
[3] Wastes generated in the Monomer Synthesis Area include, but are not limited to, "popcorn," a broad category of waste generated in both the Poly Building during the polymerization process and the Monomer Synthesis Area at the Facility.
[4] National Library of Medicine PubChem, 1,3-Butadiene. https://pubchem.ncbi.nlm.nih.gov/compound/1_3-Butadiene. Butadiene Product Stewardship Guidance Manual, American Chemistry Council, 2023.

4.30. CD popcorn waste is generated in and around the waste brine decanter and can form anywhere in the Monomer Synthesis Area. In addition, between 1 and 180 lbs. of CD popcorn waste has been generated during the Facility's regularly scheduled shutdown periods.

4.31. Butadiene popcorn waste may be generated in small amounts anywhere in the pipes during chloroprene production. Respondent treats any generation of butadiene popcorn waste as an incident subject to immediate health and safety protocols. Upon discovery, Respondent investigates its source of generation.

4.32. DPE's Standard of Procedure ("SOP") for the management of CD and butadiene popcorn waste directs DPE, after removal from various points in the monomer production process, to collect and treat the monomer popcorn wastes in a bucket and apply steam to the popcorn waste for a period of at least 1-2 hours to remove liquid and vapor chloroprene. The SOP states further that "Popcorn polymer can be stored safely after it has been steamed for at least 2 hours."

4.33. Prior to the 2022 Order, Respondent, after removing liquid and vapor chloroprene by steaming in drums, stored the 1 to 180 pounds of CD popcorn waste in the same drums and shipped the waste to a Subtitle D landfill for offsite disposal. Respondent ceased sending such treated popcorn waste to a Subtitle D landfill after September 30, 2022. As part of EPA's inspection, EPA reviewed Respondent's waste characterization forms, including the waste characterization form for the treated CD popcorn indicating that the waste did not exhibit a hazardous characteristic following the steaming of the waste. From October 1, 2022, through January 31, 2023, Respondent shipped such treated CD popcorn waste to a Subtitle C landfill for offsite disposal. Since implementing the 2022 Order, after January 31, 2023, Respondent has shipped such CD popcorn waste to an off-site Subtitle C facility for incineration.

4.34. DPE's SOP warns that "CD popcorn polymer must be handled with caution. Popcorn will accelerate the polymerization of remaining CD monomer, generating heat and pressure. Polymer also poses a fire hazard when exposed to oxygen before it is deactivated."

4.35. CD and butadiene popcorn waste management is not covered in Respondent's Permit.

2. DPE's Poly Building

The Generation of the "Poly Kettle Strainer Waste" and Hazardous Waste Finding

4.36. Respondent's batch polymerization process occurs in the Poly Building at the Site. The chemical composition of the polymerized material, including the chloroprene content, changes based on the Neoprene type.

4.37. In the polymerization process, chloroprene from the Chloroprene Process Tank is mixed with water and other chemicals such as viscosity modifiers and emulsification agents to form an emulsion.

4.38. The emulsion is then transferred to "Poly Kettle" reactors where a free-radical catalyzed reaction creates Neoprene in a batch polymerization process. After the desired conversion is reached, stabilizer is added to stop the reaction. The emulsion passes through a "Poly Kettle Strainer" to remove undesired solids (i.e., waste Neoprene) that formed during the reaction. The "Poly Kettle" is then flushed with water to recover additional emulsion. The water wash is routed through the "Poly Kettle Strainers" to the Unstripped Emulsion Tanks.

Some residual liquid remains in the waste Neoprene as it passes through the "Poly Kettle Strainer."

4.39. Prior to removing the waste Neoprene, the "Poly Kettle" is flushed with water and drained. Respondent then opens the "Poly Kettle Strainer" to remove materials captured in the strainer. Materials removed from the "Poly Kettle Strainers" are referred to herein as the "Poly Kettle Strainer Waste."

4.40. There are five (5) "Poly Kettle" reactors with individual in-line strainers. The "Poly Kettle Strainers" capture and remove filterable "Poly Kettle Strainer" materials, which when removed from the "Poly Kettle Strainers" is referred to as "Poly Kettle Strainer Waste" as it is first generated.

4.41. "Poly Kettle Strainer Waste" contains chloroprene, Neoprene emulsion, stabilizer, and may contain toluene and/or ACR (2,3-dichloro- 1,3-butadiene). When chloroprene polymerizes heat is released. According to Respondent's process knowledge, "Poly Kettle Strainer Waste" contains reduced concentrations of chloroprene which lowers the amount of heat released and the maximum temperature rise of the material.

4.42. During Neoprene production, the "Poly Kettle" reactors collectively run 12-15 batches per day. Each production batch generates up to 30 pounds of "Poly Kettle Strainer Waste" in the strainer.

4.43. EPA's Toxicological Review of Chloroprene, published in September 2010, characterized chloroprene as a likely human carcinogen. Chloroprene manufacture and use in the production of Neoprene may result in its release to the environment through various waste streams.

4.44. Air testing results from the May 2022 Sampling Investigation show 1,050 $\mu g/m^3$ of chloroprene in the air in the Poly Building before "Poly Kettle Strainer Waste" was generated.

4.45. Air testing results from the May 2022 Sampling Investigation show the concentration of chloroprene in the air at the strainers in the Poly Building increased to 193,000 $\mu g/m^3$ after "Poly Kettle Strainer Waste" was generated and removed from the strainers.

4.46. Sampling results from the May 2023 Sampling Investigation show the entrained liquid from samples S01A and S04A, generated from "Poly Kettles" #2 and #1 respectively, to have a flash point(s) of less than (<) 60 °C (140 °F). EPA tested samples using the test method specified in SW-846 ASTM D3278-78, LAC 33:V.4903(B)(1) and 40 C.F.R. § 261.21.

4.47. Liquid from the "Poly Kettle Strainer Waste" was separated from samples S01A and S04A generated in the Poly Building in "Poly Kettles" #2 and #1 respectively, and test results demonstrate a flash point of less than 60 °C (140 °F).

<u>Management of "Poly Kettle Strainer Waste" from November 2015 to December 2022</u>

4.48. A brine pit is located outside the Poly Building at the Facility. One of the brine pit's three cells is approximately 1,000 cubic feet and is used to manage "Poly Kettle Strainer Waste" and other "waste coag."[5] The brine pit contains liquid and semi-solids.

4.49. Respondent's employees used a hand-held tool to place "Poly Kettle Strainer Waste" into an open-topped bin with wheels. The employee then manually pushed the bin containing "Poly Kettle Strainer Waste" and placed the "Poly Kettle Strainer Waste" into the brine pit. The employee responsible for handling the "Poly Kettle Strainer Waste"

[5] Wastes generated from the polymerization process include, but are not limited to, the "Poly Kettle Strainer Waste" a subset of a broader category of waste described as "popcorn," "waste neoprene," and "waste coag."

during this process was required to use personal protective equipment (PPE), including a full-face respirator with a compound-specific cartridge for chloroprene.

4.50. Air testing results from the May 2022 Sampling Inspection show the concentration of chloroprene in the air was 243,000 $\mu g/m^3$ when the "Poly Kettle Strainer Waste" was transferred to the brine pit.

4.51. DPE represents that the chemical composition and processes for generating "Poly Kettle Strainer Waste" have varied during its operation of the Facility. At the time of EPA's May 2022 Sampling Inspection, after the in-line strainers were emptied in the Poly Building, employees rinsed any remaining "Poly Kettle Strainer Waste" from the in-line strainers. As observed during the Inspections, the wash water from the rinsing process, including residual "Poly Kettle Strainer Waste," entered portions of the Poly Building trench system that flowed to a separate cell of the brine pit.

4.52. From November 2015 to December 2022, the "Poly Kettle Strainer Waste" is covered with the liquid (brine) once it is placed in the brine pit. The purpose of the brine is to break the emulsion and allow Respondent to manage the chloroprene auto-polymerization. This process of auto-polymerization precipitates residual chloroprene from the water phase allowing it to form a solid phase (i.e., polychloroprene).

4.53. After a period of time during which most of the chloroprene is converted to rubber via auto-polymerization, the "Poly Kettle Strainer Waste" is removed from the brine pit with an excavator and placed into an open-to-the-air Roll-Off Bin with a capacity of 30 cubic yards.

4.54. During the May 2022 Sampling Inspection, EPA collected a 30-minute, 6-liter air sample from a location immediately adjacent to the brine pit, on the upwind edge, during the removal of stabilized "Poly Kettle Strainer Waste" from the brine pit. The reported chloroprene concentration in this sample was 10,200 $\mu g/m^3$. EPA reviewed DPE's waste characterization form indicating that DPE tested the waste in the Roll-Off Bins at the request of off-site disposal facilities. DPE's test results showed no indication of the waste being characteristically hazardous at that stage of DPE's waste handling process.

4.55. From November 2015 through September 30, 2022, Respondent shipped the "Poly Kettle Strainer Waste" contained in the Roll-Off Bin to a solid waste Subtitle D landfill for disposal. From October 1, 2022, through January 31, 2023, Respondent shipped the "Poly Kettle Strainer Waste" contained in the Roll-Off Bin to a solid waste Subtitle C landfill for disposal. Since implementing the 2022 Order, after January 31, 2023, Respondent has shipped the "Poly Kettle Strainer Waste" for incineration to a Subtitle C offsite facility.

E. The December 20, 2022 Order

4.56. The December 20, 2022, Order required, among other things, DPE to implement an Interim and an Alternative Management Plan (2022 Order Sections 4.5.2 and 4.5.3) for "Poly Kettle Strainer Waste" and to perform Emission Reduction Projects. (2022 Order is attached to this Consent Agreement).

4.57. By no later than January 31, 2023, the Interim Management Plan at a minimum required Respondent to (1) store "Poly Kettle Strainer Waste" in containers that meet RCRA Subtitle C requirements and to place the waste in a spill berm or other secondary containment, rather than the outside brine pit; and (2) transport and dispose containers of "Poly Kettle Strainer Waste" in accordance with RCRA Subtitle C requirements.

4.58. Since implementing the 2022 Order, DPE believes, from its own process knowledge, that chloroprene concentrations in the Poly Kettle Strainer Waste have been reduced by additional washing and rinsing steps undertaken prior to reaching the point of generation. Although EPA cannot confirm quantifiable reductions, EPA acknowledges Respondent's actions to reduce chloroprene emissions associated with the "Poly Kettle Strainer Waste," including the washing and rinsing steps prior to waste generation, and steaming of the waste and routing resulting emissions to a regenerative thermal oxidizer after the point of generation.

4.59. Since January 31, 2023, Respondent has transported the "Poly Kettle Strainer Waste" for incineration in accordance with RCRA requirements.

V. ALLEGED VIOLATIONS

COUNT 1

Failure to Make Hazardous Waste Determinations

5.1. The allegations expressly identified in paragraphs 1.1 through 4.59 are realleged and incorporated herein by reference.

5.2. Pursuant to LAC 33:V.1005, (40 C.F.R. § 262.11), as a generator of solid waste as defined by LAC 33:V.109, (40 C.F.R. § 261.2), Respondent is required to make an accurate determination as to whether those solid wastes are hazardous wastes at the point(s) of waste generation, to ensure that the waste is properly managed according to applicable RCRA regulations.

5.3. Pursuant to LAC 33:V.1005(E), (40 C.F.R. § 262.11(d)), a generator of solid waste must also determine whether the waste exhibits one or more hazardous characteristics as identified in LAC 33:V.4903.

5.4. Pursuant to LAC 33.V.4903(B), (40 C.F.R. § 261.21), a solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number D001. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste is a liquid and has a flashpoint less than (<) 60 °C (140 °F) as determined by the Setaflash Closed Cup Tester using the test method specified in ASTM Standard D 3278-78, as incorporated by reference in LAC 33:V.110.

5.5. Pursuant to LAC 33:V.4903(D), (40 C.F.R. § 261.23), a solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number D003. A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has the following properties listed in LAC 33:V.4903(D): (1) it is normally unstable and readily undergoes violent change without detonating; (2) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; and (3) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

5.6. Since 2015, when Respondent purchased the Neoprene operations and business from DuPont, and thereafter, to the Suspension of Production, Respondent generated the following solid wastes at the Facility:

a. CD popcorn waste in and around the waste brine decanter and/or in the Monomer Synthesis Area (D001);
b. Butadiene popcorn waste in the pipes in the Monomer Synthesis Area (D001/D003); and
c. "Poly Kettle Strainer Waste" in the Poly Building in-line strainers (D001).

5.7. The solid wastes enumerated in paragraph 5.6. a. – c. above were hazardous for the characteristics listed there for each.

5.8. Since 2015, when Respondent purchased the neoprene operations and business from DuPont, and thereafter as to some or all of the above wastes, Respondent did not properly determine if any of the solid wastes enumerated in paragraph 5.6. a. -- c. were hazardous wastes, in violation of applicable regulatory requirements of LAC 33:V.1005 (40 C.F.R. § 262.11).

5.9. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 2

Failure to Comply with Land Disposal Restrictions for Hazardous Waste

5.10. The allegations expressly identified in paragraphs 1.1 through 5.9 are realleged and incorporated herein by reference.

5.11. Since 2015, when Respondent purchased the Neoprene operations and business from DuPont, and thereafter to the Suspension of Production, Respondent took actions and implemented processes during its tenure as operator of the Facility that produced hazardous waste, as defined in LAC 33:V.109 (40 C.F.R. §§ 260.10 and 261.3).

5.12. Since 2015, when Respondent purchased the Neoprene operations and business from DuPont, and thereafter to the present, Respondent failed to properly determine, in accordance with the provisions of LAC 33:V.2245(A) (40 C.F.R. § 268.7(a)(1)), if the CD Popcorn and "Poly Kettle Strainer Waste" it generated at the Facility required treatment in order to meet the applicable standards set forth in LAC 33:V.2223, (40 C.F.R. Part 268, Subpart D), for land disposal, as defined in 42 U.S.C. § 6924(k), LAC 33:V.2203, (40 C.F.R. § 268.2(c)), as required by LAC 33:V.2245(A) (40 C.F.R. § 268.7(a)(1)).

5.13. Each failure of the Respondent to comply with the land disposal restriction requirements set forth in LAC 33:V.2245(A), (40 C.F.R. § 268.7(a)(1)) constitutes a violation of LAC 33:V.2245(A) (40 C.F.R. § 268.7(a)(1)).

5.14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 3

Treatment and Storage of Hazardous Waste in the Brine Pit without a Permit

5.15. The allegations expressly identified in paragraphs 1.1 through 5.14 are realleged and incorporated herein by reference.

5.16. The Permit does not now authorize, nor has it ever authorized, the treatment or storage of hazardous waste in the brine pit.

5.17. Based on EPA's knowledge of the processes at the Facility, Respondent's information sent in response to EPA's Request, and the results of the April 2022 Inspection and the May 2022 Sampling Inspection, EPA determines that the addition of liquid (brine) to the "Poly Kettle Strainer Waste" in the brine pit serves to reduce the potential for fires and explosions and also changes the "Poly Kettle Strainer Waste" such that it becomes less hazardous, which constitutes "treatment" as defined in LAC 33:V.109.

5.18. Based on EPA's knowledge of the processes at the Facility, Respondent's information sent in response to EPA's Request, and the results of the April 2022 Inspection and the May 2022 Sampling Inspection, EPA determines that the retention of the "Poly Kettle Strainer Waste" for a period of time in the brine pit covered with liquid brine while the "Poly Kettle Strainer Waste" auto-polymerizes, constitutes "storage" as defined in LAC 33:V.109.

5.19. Since 2015, when Respondent purchased the Neoprene operations and business from DuPont, and continuing through January 31, 2023, Respondent stored and treated the "Poly Kettle Strainer Waste" in the brine pit without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and LAC 33:V.303 and 305, (40 C.F.R §§ 270.1 and 270.10).

5.20. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 4

Treatment of Hazardous Waste in the Monomer Synthesis Area without a Permit

5.21. The allegations expressly identified in paragraphs 1.1 through 5.20 are realleged and incorporated herein by reference.

5.22. The Permit does not now authorize, nor has it ever authorized, the treatment of CD and butadiene popcorn waste in the Monomer Synthesis Area.

5.23. Based on EPA's knowledge of the processes at the Facility, Respondent's SOP for the handling and treatment of CD and butadiene popcorn waste in the Monomer Synthesis Area, and Respondent's May 26th response to EPA's May 2023 Inspection and Sampling Request Letter, EPA determines that the steaming of the CD and butadiene popcorn waste for two hours at the point of generation in order to "deactivate" it and to reduce the potential for ignition constitutes "treatment" as defined in LAC 33:V.109, (40 C.F.R. § 260.10).

5.24. Until September 30, 2022, after treatment of the CD popcorn waste, Respondent placed the waste in storage drums for disposal in a Subtitle D landfill.

5.25. Since 2015, when Respondent purchased the Neoprene operations and business from DuPont, until the Suspension of Production, Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and LAC 33:V.303 and 305, (40 C.F.R §§ 270.1 and 270.10) when it treated the CD and butadiene popcorn wastes in the Monomer Synthesis Area without a permit.

5.26. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 5

Container Violations

5.27. The allegations expressly identified in paragraphs 1.1 through 5.26 are realleged and incorporated herein by reference. Count 5 violations address containers and container areas identified in the Permit and containers and container areas not identified in the permit, sections A and B respectively.

A. Failure to Comply with Permit Container Requirements in the South/North Drum Pad area

5.28. Pursuant to Permit Section IV.B. and LAC 33:V.2205(A)(2)(a), an owner/operator of a hazardous waste treatment, storage, or disposal facility may store such wastes in containers for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal provided that each container is clearly marked to identify its contents and with (i) the words "Hazardous Waste"; (ii) the applicable EPA hazardous waste numbers; (iii) an indication of the hazards of the contents; and (iv) the date each period of accumulation begins. Container storage in the South/North Drum Pad storage area is permitted to store hazardous waste in properly labeled and sealed containers.

5.29. During the April 2022 Inspection, EPA observed six separate 55- gallon drums and several totes labeled as hazardous in the South/North drum pad area that were not labeled with a start accumulation date.

5.30. During the April 2022 Inspection, EPA observed hazardous waste and satellite accumulation area signage for used lamps and used batteries in the South/North drum pad area. The used lamp and used battery waste was not near the point of generation of the wastes, and the collective capacity of containers in the area was greater than 55 gallons. The signage in the area indicated that the containers were not labeled with the start accumulation date until full.

5.31. Since at least April 2022, Respondent violated Permit Section IV.B. and LAC 33:V.2205(A)(2) requirements to label containers in the permitted storage areas of the South/North drum pad area.

B. Storage without a Permit

5.32. Section 3005 of RCRA, 42 U.S.C. § 6925 and LAC 33.V.1015 (40 C.F.R. § 270.1(b)), provides that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

5.33. Prior to EPA inspections in April 2022 and May 2023, Respondent managed hazardous waste containers in areas of the Facility not covered by the Permit.

Generator Accumulation of Hazardous Waste (the "Generator Permit Exemption")

5.34. Pursuant to LAC 33.V.1015(A), (40 C.F.R. § 262.34), a generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of LAC 33:V.Subpart 1, provided that all of the following conditions for exemption are met.

5.35. Pursuant to LAC 33.V.1015(B)(5), (40 C.F.R. § 262.34), a large quantity generator shall mark or label its container with: (i) the words "Hazardous Waste"; (ii) an indication of the hazards of the contents; and (iii) each container shall be marked or labeled with the date upon which each period of accumulation begins. The date shall be clearly visible for inspection on each container.

5.36. During the April 2022 Inspection, EPA observed approximately 17 totes labeled in the South/North drum pad area as "low pH water" near the Emergency Aqueous Tank. The waste profile identified the material as characteristic hazardous waste, and the totes were not labeled as "Hazardous Waste."

5.37. During the May 2023 Inspection and Sampling Investigation, EPA observed containers of sample purge waste generated throughout the Monomer Synthesis Area accumulated beneath the Isom Purge Tank in a roped-off area. The containers did not have accumulation start dates.

5.38. Since at least April 2022 and May 2023, Respondent stored hazardous waste in containers at the Facility without a permit, interim status, or valid exemption in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and LAC 33:V.303 (40 C.F.R. § 270.1(b)).

C. Failure to Comply with Container Inspection and Recordkeeping Requirements

5.39. Pursuant to Permit Section III.E, and LAC 33:V.2109(A), (40 C.F.R. § 264.174), at least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

5.40. Pursuant to Permit Section III.E. and LAC 33:V.2109(C) and LAC:V.1509(D), (40 C.F.R. § 264.15(d)), the owner or operator must record inspections in an inspection log or summary. The inspection record must be kept for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

5.41. During the April 2022 Inspection, Respondent provided electronic records of inspection logs for the central accumulation area near the CD Heels Tank and the central accumulation area outside the Neoprene lab in the Poly Building, and the South/ North Central drum pad area for the years 2019 through 2021. After review of the available inspection records, inspectors noted several issues or components missing from the inspection forms. Multiple inspection forms did not have an inspector name listed on the form, and where instances of an "abnormal" observation was noted, no additional notes or indication of remedial action to address the issue was provided. Finally, there were several instances in which an inspection record was not available for a period of over seven days. The time intervals identified without an inspection record that were over seven days are as follows:

For the CD Heels Tank CAA Storage Pad

- Between August 24, 2021, to November 10, 2021,
- Between February 8, 2022, to February 22, 2022,
- Between April 5, 2022, to April 19, 2022.

For the Poly Building CAA Drum Pad

- Between August 24, 2021, to November 10, 2021.

For the South/North CAA Drum Pad

- Between December 12, 2019, to December 30, 2019,
- Between March 17, 2020, to March 25, 2020,
- Between August 19, 2020, to August 31, 2020,
- Between September 27, 2021, to November 1, 2021.

5.42. For the periods above from December 2019 through April 2022, Respondent was in violation of the container inspection and inspection log requirements pursuant to Permit Section III.E, and LAC 33:V.2109(A) (40 C.F.R. § 264.174) (Container Inspection requirements) and LAC 33:V.2109(C) and LAC 33:V.1509(D) (40 C.F.R. § 264.15(d)) (Inspection record requirements).

5.43. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

COUNT 6

Failure to Comply with Permit Facility Design and Operation Requirements

5.44. The allegations expressly identified in paragraphs 1.1 through 5.43 are realleged and incorporated herein by reference.

5.45. Pursuant to Permit Section III.A., LAC 33:V.1511, and 40 C.F.R. § 264.31, an owner and operator shall maintain and operate all facilities to minimize the possibility of a fire, explosion, or any unauthorized sudden or non-sudden release of hazardous waste or hazardous waste constituents to any media, including but not limited to air, soil, or water, that could threaten human health or the environment.

5.46. Air testing results from the May 2022 Sampling Investigation show 1,050 $\mu g/m^3$ of chloroprene in the air in the Poly Building before "Poly Kettle Strainer Waste" was generated.

5.47. Air testing results from the May 2023 Sampling Investigation show the concentration of chloroprene in the air near the strainers in the Poly Building increased to 193,000 $\mu g/m^3$ after the "Poly Kettle Strainer Waste" was generated and removed from the strainers.

5.48. During the EPA May 2022 Sampling Inspection, EPA measured the concentration of chloroprene when the "Poly Kettle Strainer Waste" was transferred to the brine pit to be 243,000 $\mu g/m^3$.

5.49. During the EPA May 2022 Sampling Inspection, EPA measured the concentration of chloroprene in the air in the vicinity of the brine pit during removal of the "Poly Kettle Strainer Waste" into the Roll-Off Bin to be 10,200 $\mu g/m^3$.

5.50. During the EPA May 2022 Sampling Inspection, EPA observed the wash water from rinsing the in-line strainers in the Poly Building and further observed the residual "Poly Kettle Strainer Waste" entered portions of the Poly Building trench system and flowed to a separate cell of the brine pit.

5.51. Between the May 2022 inspection and Respondent's implementation of the 2022 Order, Respondent did not maintain and operate the Facility to minimize the possibility of release of hazardous waste or hazardous waste constituents to the air and into portions of the Poly Building trench system that could threaten human health or the environment.

5.52. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $124,426, increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

VI. TERMS OF SETTLEMENT

For purposes of this proceeding:

6.1. Respondent admits the jurisdictional allegations of the Consent Agreement solely for the purposes of this Consent Agreement.

6.2. Respondent neither admits nor denies specific factual allegations contained in the Consent Agreement, nor any legal basis for the allegations contained in this Consent Agreement.

6.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and Respondent's good faith efforts to comply with applicable requirements and the 2022 Order. After considering these factors, EPA has determined, and Respondent agrees that an appropriate penalty to settle this action is $996,703.35 (the "Assessed Penalty").

6.4. Respondent agrees to pay the Assessed Penalty within thirty (30) days of the Effective Date of the Final Order, and to undertake the actions specified in Section VIII (Compliance Order), and if at any time Neoprene production resumes, the actions specified in the Addendum Compliance Order of this Consent Agreement.

6.5. Solely for the purposes of this proceeding, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Agreement or the Final Order in any subsequent enforcement proceedings; require Respondent's full or interim compliance with the terms of this Consent Agreement or the Final Order; or impose sanctions for violations of this Consent Agreement or the Final Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims and to contest or otherwise challenge the allegations contained in this Consent Agreement in any proceeding unrelated to the implementation of this Consent Agreement.

6.6. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

6.7. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement by Respondent resolves Respondent's liability for federal civil penalties for the specific violations and facts set forth herein.

6.8. Penalty Provisions

6.8.1 Respondent agrees to pay a civil penalty in the amount of $996,703.35 within thirty (30) days after the Effective Date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

6.8.2. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

6.8.3. When making a payment, Respondent shall:

(a) Identify every payment with Respondent's name and the docket number of this Agreement, *Docket Number RCRA-06-2025-0910.*

(b) Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6

1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Vaugh.Lorena@epa.gov

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECD-SR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Deppe.Fred@epa.gov

and

U.S. Environmental Protection Agency
Fine and Penalties
Cincinnati Finance Center
via electronic mail to
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debt card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

6.8.4 Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days of the Effective Date, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days of the Effective Date, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

6.8.5. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

6.8.6. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal, that is the outstanding Assessed Penalty amount.

6.8.7. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

6.8.8. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section VIII (Compliance Order) and, if necessary, the Addendum Compliance Order, is restitution, remediation, or required to come into compliance with the law.

6.8.9. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service ("IRS") a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Respondent's failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at http://www.irs.gov/pub/irs-pdf/fw9.pdf.

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN.

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at chalifoux.jessica@epa.gov, on or before the date that Respondent's $996,703.35 penalty payment is due, pursuant to paragraph 6.3 of the CAFO, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence.

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

VII. NEOPRENE PRODUCTION, RESPONDENT'S REPRESENTATION, AND COMPLIANCE REQUIREMENTS

7.1. Respondent represents that it has suspended Neoprene production at the facility. Regardless of whether Respondent suspends, closes, or sells the Facility, or resumes operations, Respondent shall comply with and adhere to the paragraphs below in Section VIII (Compliance Order). If Respondent resumes Neoprene production at the Facility, Respondent's Neoprene operations shall comply with the compliance requirements listed in the Addendum Compliance Order to this Consent Agreement, which would be in addition to, and not in lieu of, the terms of this Consent Agreement, including Section VIII (Compliance Order).

VIII. COMPLIANCE ORDER

The following compliance requirements apply based upon Respondent's representation regarding the Suspension of Production.

8.1 Brine Pit Hazardous Waste Removal

8.1.1 Within 30 days of the Effective Date, Respondent shall certify to the following cleanout steps for the brine pit after the Suspension of Production: (i) blinding or removal of overhead drain piping has been performed; (ii) evacuation of liquid using high-pressure pumping equipment as needed during cleanout process has been performed; (iii) removal of visible waste deposits using a high-pressure water jetting system rated for at least 10,000 psi has been performed; (iv) disposal of the liquid waste generated during waste removal at the Facility's wastewater treatment unit has been performed; and (v) disposal of the solid waste generated during waste removal as a functionally equivalent hazardous waste at a RCRA Subtitle C disposal facility has been or will be performed.

8.1.2 Within 30 days of the Effective Date, Respondent shall certify that the brine pit inlet trenches have been pressure washed by a qualified industrial cleaning company after DPE ceased placing Poly Kettle Strainer Waste in the outside brine pit in January 2023.

8.2. The December 20, 2022, Order

Respondent has certified compliance with paragraph 4.5.1 and therefore is no longer obligated by paragraph 4.5.1 of the 2022 Order. Respondent is in compliance with paragraph 4.5.5 of the 2022 Order and therefore is no longer obligated by all requirements in paragraph 4.5.5. The Parties amended paragraph 4.5.4 twice, first to replace the date of March 31, 2024 with the date of March 31, 2025, and most recently, Complainant amended the date of March

31, 2025 with March 31, 2026. Respondent has suspended Neoprene production operations at the Facility since the Suspension of Production and if the Facility is closed or sold, then, Respondent's ongoing obligation to comply with paragraphs 4.5.2, 4.5.3, and 4.5.4 of the 2022 Order, as amended, shall cease in accordance with the requirements of Section XIX. If Respondent resumes Neoprene production operations, Section 8.1 of the Addendum Compliance Order shall apply.

IX. Excusable Delay/Force Majeure

9.1. Respondent shall perform all the requirements of this Consent Agreement within the time limits established herein, unless such time limit is otherwise modified or a scheduling change has been agreed to by the EPA in accordance with this Consent Agreement, or unless the performance is prevented or delayed solely by events which constitute a Force Majeure Event, or which cause an Excusable Delay.

a. For purposes of this Consent Agreement, a Force Majeure Event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence, and which delays or prevents performance by a date required by this Consent Agreement. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events.

b. For Purposes of this Consent Agreement, an Excusable Delay is defined as any action and/or inaction by a third-party that impedes and/or delays Respondent's ability to perform the actions required by the Compliance Requirements of this Consent Agreement and where such impediment(s) and/or delay(s) were not of a nature Respondent could reasonably foresee and prevent. Where the action and/or inaction that may cause such delay and/or impediment was reasonably foreseeable by Respondent, Respondent shall document its exercise of due diligence and best efforts, which includes Respondent's actions taken to prevent any foreseeable challenges given the foreseeability of all circumstances surrounding the facts and Respondent's obligations to perform the Compliance Requirements of this Consent Agreement. Such actions and/or inactions by a third-party does not include and/or relate to unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events.

9.2. Respondent shall notify the EPA in writing within seven (7) business days after becoming aware of any event which is known, or reasonably should have been known, to have constituted a Force Majeure Event or an Excusable Delay. Such notice shall provide available information on the event causing or anticipated to cause the delay, the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent must adopt all reasonable measures to avoid or minimize the delay. Failure to comply with the notice provision of this Subsection shall constitute a waiver of the Respondent's right to assert a Force Majeure Event or an Excusable Delay has occurred and shall be grounds for EPA to deny an extension of time for performance.

9.3. After receiving notice that Respondent is invoking the Force Majeure Event or an Excusable Delay provision of this Consent Agreement, EPA shall respond in writing indicating either EPA's agreement that the event constitutes a Force Majeure Event or an Excusable Delay or its disagreement and the reasons, therefore.

9.4. If EPA and the Respondent agree that a Force Majeure Event or an Excusable Delay has occurred, the time for performance may be extended, upon EPA's approval, for a period equal to the delay resulting from such circumstances or such longer time as EPA determines appropriate. This shall be accomplished through written exchange of letters amongst the parties and a documentation to the file or through modification of the schedule in a previously approved schedule. Such an extension will not alter the schedule for performance or completion of any other tasks required by this Consent Agreement unless these are also specifically altered.

9.5. In the event that EPA and the Respondent cannot agree that any delay or failure has been or will be caused by a Force Majeure Event or an Excusable Delay, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions contained in this Consent Agreement.

X. STIPULATED PENALTIES

10.1. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of this Consent Agreement and within the agreed upon time period, then the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Failure to Comply	Penalty Per Violation Per Day
1st through 15th day	$1,500

16th through 30th day	$2,000
31st day and beyond	$10,000

10.2. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected and/or compliance is achieved, as determined by EPA. Respondent is liable for the total sum of the stipulated penalty assessed by EPA.

10.3. The payment of stipulated penalties shall be made in accordance with the options set forth herein this paragraph:

The payments shall be made by one of the following methods:

a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks must use a United States Bank to send wire transfer to the US EPA

c. By signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.) a bank check, cashier's check, or certified check payable to: Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
US EPA Fines and Penalties

1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

d. By Automatic clearing house (ACH) payment through Vendor Express using:

US Treasury REX/Cashlink Receiver
ABA: 051036706
Account number 310006 Environmental Protection Agency
CTX Fonnat Transaction Code 22 -checking
Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

e. Through www.pay.gov using a credit or debit card (Visa, MasterCard, American Express, and Discovery) or checking accounting information.

"In the matter of DENKA PERFORMANCE ELASTOMER, LLC, Docket No. RCRA-06-2025-0910" shall be clearly marked on the check or other remittance, to ensure proper credit. Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

10.4. Respondent understands that failure to timely pay any portion of the stipulated penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on the stipulated penalty from the date of delinquency until such stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

10.5. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

10.6. The Respondent shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

Jeffrey Yurk, Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Russell Murdock
Manager, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Elizabeth George
George.Elizabeth.A@epa.gov

10.7. Adherence to these procedures in addition to Respondent's compliance with the provisions of paragraph 10.4 concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

10.8. If Respondent disputes the basis for imposition of stipulated penalties, then the issues shall be resolved under the Dispute Resolution procedures of this Consent Agreement. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

XI. NOTIFICATIONS

11.1. All plans or other documents that are required pursuant to this Consent Agreement to be submitted to EPA may be signed electronically, so long as Respondent uses a "particular electronic signature device" that complies with the requirements of 40 C.F.R. § 3.4(d). All such plans and documents shall be submitted to the individuals identified below and addressed as below (sending a plan or other document via email alone is only acceptable if the party to whom such plan or other document is being sent agrees in writing to delivery via email only). Unless otherwise specified herein, whenever a plan or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it must be directed to the individuals specified below at the addresses given, unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:
Fred Deppe
U.S. Environmental
Protection Agency
Region 6 MC ECD-SR
1201 Street, Suite 500
Dallas, Texas 98101
deppe.fred@epa.gov

Justin Young
young.justin@epa.gov

RESPONDENT:
Akihiko Kusaka
Attorney
Denka Performance Elastomer, LLC
560 Highway 44
LaPlace, LA 70068
Akihiko-Kusaka@denka-pe.com
With copy to:

Jason Hutt
Bracewell LLP
2001 M Street NW, Suite 900
Washington, D.C. 20036-3310
D: (202) 828.5850
Jason.Hutt@bracewell.com

11.2. Any plan or document submitted by Respondent pursuant to this Consent Agreement that makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Agreement shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if:

(a) the authorization is made in writing; and

(b) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or relevant Facility activity. The certification required by this paragraph shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature:

Name:

Title:

11.3. Following the receipt of any plan or other document that requires EPA approval pursuant to this Consent Agreement, the EPA will, in writing, via email, U.S. Mail, or overnight mail service: a) approve the plan or other document; b) approve the plan or other document upon specified conditions; c) partially approve and partially disapprove part of the plan or other document; or d) disapprove the plan or other document. In the event of disapproval of any portion of the plan or other document, EPA will include a statement of the reasons for such disapproval in its response.

11.4. Any plan or document approved by EPA shall be automatically incorporated into this Consent Agreement upon written approval by EPA and shall be implemented within thirty (30) days, or such other time as specified in the approved plan or document.

11.5. Prior to written approval, no plan or document shall be construed as approved and final. Oral advice, suggestions, or comments given by the EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of any approval be considered binding.

11.6. Upon receipt of EPA's approval of any plan or other document that requires EPA approval, Respondent must take all actions as set forth in the approved plan or document.

11.7. Upon receipt of EPA's conditional approval or partial approval, Respondent shall take all actions required by the conditionally approved document, or, with respect to a partially approved document, take all actions that EPA determines are technically severable from the disapproved portions of such document.

11.8. Upon receipt of EPA's disapproval, in whole or in part of any document, Respondent shall, within fourteen (14) days or such other time as EPA agrees to in writing, incorporate or otherwise address each of EPA's comments and resubmit the document, or disapproved portion thereof, to EPA for approval.

11.9. For all requirements contained in Section VIII (Compliance Order) paragraphs 8.1 through 8.2. above, and in the Addendum Compliance Order, Respondent must, within seven (7) days of each completed requirement, certify in writing to EPA and in accordance with Section XI (Notification) paragraph 11.2, that Respondent is in compliance with the requirements as set forth in Section VIII (Compliance Order) and, if Respondent has resumed Neoprene production after the Effective Date, in the Addendum Compliance Order.

XII. DISPUTE RESOLUTION

12.1. If Respondent objects to any decision or directive of EPA regarding Section VIII (Compliance Order), the Addendum Compliance Order, or Section X (Stipulated Penalties), then Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Manager
Waste and Chemical Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Manager, RCRA legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Elizabeth George
George.Elizabeth.A@epa.gov

12.2. The Waste and Chemical Enforcement Manager ("Manager") or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to resolve the dispute. If an agreement is reached between the Manager and the Respondent, the agreement shall be reduced to writing and signed by the Manager and the Respondent and incorporated by reference into this Consent Agreement.

12.3. If no agreement is reached between the Manager and the Respondent within that time and the parties agree they have reached an impasse, they shall submit the dispute to a neutral third-party mediator selected and agreed upon by the Parties and the Parties shall participate in non-binding mediation consistent with 40 C.F.R. § 22.18(d).

12.4. If the Dispute Resolution process results in a modification of this Consent Agreement, the modified Consent Agreement must be approved by the Regional Judicial Officer and filed pursuant to the Section on Modification, below.

XIII. MODIFICATION

13.1. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of all parties, and approved by a Regional Judicial Officer, and such modification or amendment shall be filed with the Regional Hearing Clerk.

XIV. RETENTION OF ENFORCEMENT RIGHTS

14.1. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or state laws, regulations, or permitting conditions.

14.2. Except as specifically provided in this Consent Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, and contaminants, on or at Respondent's Facility. Furthermore, nothing in this Consent Agreement shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws or regulations.

14.3. In accordance with Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issuance of this Consent Agreement does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other actions authorized under RCRA, or other applicable federal laws or regulations. The waiver in paragraph 6.5 and 6.6 of this Consent Agreement is limited to this proceeding and does not apply to any separate proceedings that the EPA will bring. This Consent Agreement does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

XV. INDEMNIFICATION

15.1. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this Consent Agreement, nor shall EPA or the United States Government be held out as a party to any contract entered into by a Respondent in carrying out the activities required by this Consent Agreement.

XVI. RECORD PRESERVATION

16.1. Respondent shall preserve, during the pendency of this Consent Agreement, all records in its possession or in the possession of its employees, agents, contractors, or successors, which relates to Respondent's completion of this Consent Agreement regardless of any document retention policy to the contrary.

XVII. COST

17.1. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 0121), and any regulations promulgated pursuant to those Acts.

XVIII. OTHER MATTERS

18.1. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

18.2. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

XIX. COMPLIANCE CERTIFICATION, FACILITY CLOSURE OR TRANSFER

19.1. Respondent shall pay the assessed penalty and certify completion of Section VIII (Compliance Order) in writing and in accordance with the certification language set forth in Section XI (Notification). Certification is deemed accepted unless EPA objects in writing within sixty (60) calendar days of EPA's receipt of Respondent's certification.

19.2 This Consent Agreement shall not relieve Respondent of any obligations under applicable state and federal regulations regarding the status of solid and hazardous waste management at the Facility.

19.3. After Respondent's certification of compliance with Section VIII (Compliance Order) and EPA's acceptance of Respondent's certification, if the Facility has not resumed Neoprene production and DPE or the Facility are sold (transferred), Respondent shall, at least 30 days prior to such contemplated transfer of ownership or operation of the Facility: (i) notify EPA of the proposed transfer in accordance with Section XI (Notification), and (ii) place transferee on written notice that implementation of the terms of this Consent Agreement (Section VIII, Compliance Order, and the Addendum Compliance Order) apply to Respondent's Facility operations. Respondent shall certify completion of these notification requirements in writing and in accordance with the certification language set forth in Section XI (Notification). Upon satisfaction of these notification requirements, and successful transfer of the Facility, Respondent will no longer be obligated under this Consent Agreement.

19.4. If at any time Respondent resumes production of Neoprene, Respondent shall certify compliance with Section VIII (Compliance Order) prior to the resumption of production and certify compliance with the Addendum Compliance Order within the time periods provided therein. Such certifications shall be in writing and in accordance with the requirements and certification language set forth in Section XI (Notification). Certification is deemed accepted unless EPA objects in writing within (60) calendar days of EPA's receipt of Respondent's certification. If such certification has been accepted by the passage of the 60 days, or otherwise accepted by EPA, Respondent is no longer obligated under the terms of this Consent Agreement.

19.5. After the Effective Date, if closure is commenced pursuant to 40 C.F.R. Part 264, Subpart G, Respondent is no longer obligated under the terms of this Consent Agreement.

XX. EFFECTIVE DATE OF SETTLEMENT

20.1. This Consent Agreement, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk ("Effective Date"). 40 C.F.R. §§ 22.18(b)(2) and 22.31(b).

FOR RESPONDENT

DATED: 6/22/2026

Jun Nakamoto.

Jun Nakamoto, CEO
Denka Performance Elastomer, LLC

FOR COMPLAINANT

DATED:

Margaret Osbourne
Digitally signed by MARGARET OSBOURNE
Date: 2026.06.22
17:06:22 -05'00'

Cheryl T. Seager, Director
Enforcement and Compliance Division
U.S. EPA, Region 6

ADDENDUM COMPLIANCE ORDER

The following provisions shall apply to Respondent at any time Respondent resumes Neoprene production at the Facility after the Effective Date.

1. Solid waste inventory and hazardous waste determinations

1.1. Respondent shall establish and maintain an inventory of all solid waste streams that are reasonably anticipated by Respondent to be generated at the Facility no less than 60 days before resuming Neoprene production operations besides such wastes generated in the Poly Building at, and downstream of the Poly Kettle strainers. The inventory required by this paragraph shall identify: (a) all solid waste not included in the Permit; (b) the point of generation of these solid wastes (location and process); (c) how the hazardous waste determination was made (e.g., process knowledge, sampling, etc.); (d) the waste determination and any records/analysis supporting that determination; and (e) the waste profile number. Within [120 days] of resuming Neoprene production operations at the Facility, Respondent shall provide the inventory to EPA. Respondent must maintain the inventory for a period of two years after initially submitting the inventory to EPA. Any updates to the inventory during this time frame shall be provided to EPA on a semi-annual basis.

1.2. Respondent shall update the listing of hazardous waste codes that apply to the wastes managed at the Facility by Respondent in the Part A Application to the Permit based on whether any hazardous waste has been identified on the inventory (and any update to the inventory) within two years of the initial submission of the inventory to EPA. Additionally, Respondent shall comply with Section III.C. of the Permit and revise the Waste Analysis Plan attached to the Permit based on whether any hazardous waste has been newly identified on the inventory (and any update to the inventory) for a period of two years after the initial submission of the inventory to EPA. If any modifications to the Permit are necessary based on the revisions to the Waste Analysis Plan and any updates to the listing of waste codes in the Part A Application, Respondent must provide information to LDEQ to support modification pursuant to Permit Section II.E.7.

2. Management of CD Popcorn in the Monomer Synthesis Area

2.1. Respondent must store and treat the Monomer Area CD popcorn in RCRA Subtitle C compliant containers. Upon resuming Neoprene production operations at the Facility, and subject to obtaining all necessary authorizations from LDEQ to control emissions from such CD popcorn, DPE shall control emissions in accordance with applicable 40 C.F.R. Part 264 Subparts AA, BB, and CC requirements (i.e., carbon adsorption, thermal or catalytic incinerator, or condenser, etc.). DPE shall transport and dispose of CD popcorn in accordance with RCRA Subtitle C requirements.

3. Personal Protective Equipment

3.1. Within thirty (30) days of resuming Neoprene production operations at the Facility, Respondent must select and equip personnel handling Butadiene popcorn with appropriate respiratory protection equipment based on a maximum use concentration calculated using the acceptable exposure limit (AEL) for chloroprene based on current National Institute of Occupational Safety & Health (NIOSH) recommendations (1 ppm) and the appropriate assigned protection factor as specified in 29 C.F.R. § 1910.134. Prior to resuming Neoprene production at the Facility, Respondent shall update and implement applicable SOPs to include a process to: (i) flag or otherwise mark the area(s) where Butadiene popcorn is generated and/or Butadiene cleanout occurs; and (ii) minimize the presence of personnel without appropriate protection equipment in such areas where Butadiene popcorn is generated and/or Butadiene cleanout occurs. Respondent shall submit evidence of these updates to EPA upon completion.

4. Brine Pit Upgrade

4.1. Prior to resuming Neoprene production or placing any waste generated from operations at the Facility in the brine pit, Respondent shall install a nonporous liner or, with EPA prior approval, a similar upgrade. Within 180 days of the installation of the nonporous liner or a similar EPA pre-approved upgrade, Respondent shall hire a qualified professional engineer (PE) to perform integrity testing on the brine pit to ensure the brine pit is structurally sound and is not leaking or unfit for use. The qualified PE shall certify that the nonporous liner or similar EPA pre-approved upgrade was installed properly and in accordance with applicable manufacturer recommendations, if any.

5. Container Management

5.1. Upon resuming Neoprene production, Respondent shall ensure that container integrity is compliant with 40 C.F.R. Part 265 Subpart I for treatment (e.g., steam sparging) and 40 C.F.R. Part 262 large quantity generator requirements (40 C.F.R. § 262.34 and 40 C.F.R. §§ 262.30 and 262.31) referencing the Department of Transportation requirements at 49 C.F.R. Part 172 and Part 173, 178, and 179 for transport of all waste including popcorn waste. If Respondent is no longer treating (i.e., steam sparging) and storing "Poly Kettle Strainer Waste", CD popcorn waste, and Butadiene popcorn waste, Respondent need not comply with this Section.

5.2. Upon resuming Neoprene production operations, Respondent shall conduct weekly inspection of containers in less than 90-day areas not covered by Respondent's Permit and must comply with all inspection, labeling, and accumulation date requirements, each under 40 C.F.R. § 265.174 and § 262.34.

6. Worker Training Program

6.1. Within 180 days of resuming Neoprene production operations, Respondent shall ensure compliance with RCRA training standards at LAC 33:V.1515 (40 C.F.R. § 264.16).

7. Standard of Procedure Documentation Updates

7.1. After obtaining all necessary authorizations from LDEQ pursuant to paragraph 2.1 of the Addendum Compliance Order, DPE shall update its SOP for the CD popcorn waste in the Monomer Synthesis Area in accordance with 40 C.F.R. § 264.17. Before generating Butadiene waste in the Monomer Synthesis Area, Respondent must implement an SOP for Butadiene waste in accordance with 40 C.F.R. § 264.17. Upon EPA approval of Respondent's successful Emission Reduction Project in the 2022 Order Section 4.5.3 and within 30 days of EPA's approval of an Alternative Management Plan, Respondent must review, and update as necessary, the SOPs for all wastes generated in the Poly Building.

8. The December 20, 2022, Order

8.1. The requirements in paragraphs 4.5.2, 4.5.3, and 4.5.4 of the 2022 Order, as amended, remain in effect and are attached to this Consent Agreement for reference.

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Denka Performance Elastomer, LLC is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Dated ___________________

ELIZABETH RYLAND
Digitally signed by ELIZABETH RYLAND
Date: 2026.06.23 10:16:06 -05'00'

Renea Ryland
Acting Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant:

mostaghim.negin@epa.gov
george.elizabeth.a@epa.gov

Copy via Email to Respondent:

Akihiko Kusaka
Attorney
Denka Performance Elastomer, LLC
560 Highway 44
LaPlace, LA 70068
Akihiko-Kusaka@denka-pe.com
With copy to:

Jason Hutt
Bracewell LLP
2001 M Street NW, Suite 900
Washington, D.C. 20036-3310
Jason.Hutt@bracewell.com

LORENA VAUGHN
Digitally signed by LORENA VAUGHN
Date: 2026.06.23 10:19:01 -05'00'

Regional Hearing Clerk
U.S. EPA, Region 6