

**FILED**

22 DEC 20 AM 11:51

BEFORE THE REGIONAL HEARING CLERK  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY A REGION VI

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In the Matter of:	)	DOCKET NO. RCRA-06-2023-0906
	)	
Denka Performance Elastomer, LLC	)	<b>CONSENT AGREEMENT</b>
	)	
	)	
	)	
	)	
Respondent.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a).

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,” 40 Code of Federal Regulations (“C.F.R.”) Part 22, EPA issues, and Denka Performance

Elastomer, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), 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.

2.3. Part III of 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. ALLEGATIONS**

3.1. On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 Fed. Reg. 3,348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this Consent Agreement are to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. (83 Fed. Reg. 6,6143; 40 C.F.R. § 272.951: Louisiana State-Administered Program: Final Authorization). References and citations to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous

Waste Management Program” may vary slightly from the State of Louisiana’s published version. The corresponding C.F.R. citations are also provided.

3.2. LDEQ is the designated state agency to implement the authorized RCRA program in the State of Louisiana. LDEQ conducted periodic RCRA inspections at Respondent’s facility, including a Full Compliance Evaluation Inspection in 2021 in which no violations were noted as a result of the inspection.

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

3.4. Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), LAC 33:V.109 (40 C.F.R. § 260.10).

3.5. Respondent operates the Neoprene manufacturing operations at the Pontchartrain Works Site in St. John the Baptist Parish, Louisiana, 560 Highway 44, LaPlace, Louisiana 70068 (“the Site”).

3.6. At the Site, Respondent operates hazardous waste management units 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 (“the Permit”).

3.7. Respondent is the “operator” of the hazardous waste management units referenced in Paragraph 3.6, as that term is defined in LAC 33:V.109, (40 C.F.R. § 260.10).

3.8. Respondent generates and handles additional wastes at the Site that form the basis for the allegations in this Consent Agreement, but these activities are not covered or identified in Respondent’s Permit.

3.9. Together, and solely for purposes of this Consent Agreement, all contiguous land, structures, other appurtenances, and improvements on the land used for managing waste referenced in Paragraphs 3.6, 3.7, and 3.8 comprise the “Facility” as that term is defined in LAC 33:V.109, (40 C.F.R. § 260.10).

#### **EPA’s Information Gathering, Inspection, and Sampling Activities**

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

3.11. During March, April, and May 2022, Respondent submitted responses to the Request.

3.12. On April 18, 2022, through April 21, 2022, EPA and LDEQ conducted a RCRA Compliance Inspection of the Facility (“Inspection”).

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

3.14. During the May 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” as defined in Paragraph 3.20 below.

#### **Generation of “Poly Kettle Strainer Waste” at the Facility**

3.15. 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 multi-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.

3.16. 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).

3.17. Respondent manufactures Neoprene in the Poly Building within the Polymerization Process Area at the Site.

3.18. 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.

3.19. 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 form 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.”

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

3.21. 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.

3.22. "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.

3.23. Typically, the "Poly Kettle" reactors collectively run 12-15 batches per day and have the capacity to run up to 20 batches per day. Each production batch generates up to 30 pounds of "Poly Kettle Strainer Waste" in the strainer.

3.24. 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.

### Management of "Poly Kettle Strainer Waste"

3.25. Respondent operates a brine pit located outside the Poly Building. 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"<sup>1</sup> (the "Outside Brine Pit"). The brine pit contains liquid and semi-solids. Respondent's historical waste determination relied upon process knowledge, including a general assessment of all "waste coag" generated at the Facility.

3.26. Respondent's employees use a hand-held tool to place "Poly Kettle Strainer Waste" into an open-topped bin with wheels. The employee then manually pushes the bin containing "Poly Kettle Strainer Waste" and places the "Poly Kettle Strainer Waste" into the "Outside Brine Pit." The employee responsible for handling the "Poly Kettle Strainer Waste" during this process is required to use personal protective equipment (PPE), including a full-face respirator with a compound-specific cartridge for chloroprene.

3.27. At the time of EPA's May 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 an open floor grate below the strainers and flowed to a separate cell of the brine pit.

3.28. The "Poly Kettle Strainer Waste" is covered with the liquid (brine) once it is placed in the "Outside 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-

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<sup>1</sup> 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."

polymerization precipitates residual chloroprene from the water phase allowing it to form a solid phase (i.e., polychloroprene).

3.29. 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 “Outside Brine Pit” with an excavator and placed into an open-to-the-air Roll-Off Bin with a capacity of 30 cubic yards.

3.30. Respondent ships the “Poly Kettle Strainer Waste” contained in the Roll-Off Bin to a solid waste landfill.

## VIOLATION

### Count 1: Failure to Make a Hazardous Waste Determination

3.31. The allegations in Paragraphs 1 through 3.30 are realleged and incorporated herein by reference.

3.32. Pursuant to LAC 33:V.1103 (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.

3.33. At the time of the April Inspection and May Sampling Inspection, Respondent routinely generated solid waste known as “Poly Kettle Strainer Waste” and did not make a sufficient hazardous waste determination at the point of generation from the “Poly Kettle Strainers.”



3.34. Based on EPA's knowledge of the processes at the Facility, the results of the April Inspection and May Sampling Inspection, and Respondent's response to the Request, EPA has determined that the "Poly Kettle Strainer Waste" may exhibit the characteristics of ignitability and reactivity, in which case such waste would be a hazardous waste pursuant to LAC 33:V.4903(B) and 4903(D) (40 C.F.R. §§ 261.21 and 261.23), bearing waste codes D001 and D003, respectively.

3.35. Respondent is a "generator" of "solid waste" and "hazardous waste" as those terms are defined in LAC 33:V.109 (40 C.F.R. §§ 260.10 and 261.3).

3.36. Respondent has violated the applicable regulatory requirements of LAC 33:V.1103 (40 C.F.R. § 262.11) by failing to make the requisite hazardous waste determination for the solid waste listed in Paragraph 3.33 above.

3.37. 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 \$25,000, and 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.

#### **IV. TERMS OF SETTLEMENT**

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

4.2. Respondent neither admits nor denies any factual statements or allegations contained in this Consent Agreement, or any legal basis for the allegations contained in this Consent Agreement.

4.3. Respondent agrees to undertake the actions specified in this Consent Agreement.

4.4. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective action within the time specified in this Consent Agreement may subject Respondent to civil penalties for each day of continued noncompliance.

4.5. Respondent is ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

4.5.1. **Personal Protective Equipment:** Within 30 days of the Effective Date, Respondent must select and equip personnel handling “Poly Kettle Strainer Waste” 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. Within 30 days of the Effective Date, Respondent shall update applicable operating procedures to include a process to: (i) flag or otherwise mark the area(s) where “Poly Kettle Strainer Waste” cleanout is occurring; and (ii) minimize the presence of personnel without appropriate respiratory protection equipment in such areas during “Poly Kettle Strainer Waste” cleanout. Respondent shall submit evidence of these updates to EPA upon completion.

4.5.2. **Interim Management of “Poly Kettle Strainer Waste”:** By no later than January 31, 2023, Respondent must store the “Poly Kettle Strainer Waste” when removed from the “Outside Brine Pit” in containers that meet RCRA Subtitle C requirements. Such containers of “Poly Kettle Strainer Waste” must be placed in a spill berm or other secondary containment, and transported and disposed of in accordance with RCRA Subtitle C requirements.

4.5.3. **Alternative Management Plan of “Poly Kettle Strainer Waste” and Emission Reduction Projects:** Respondent must continue testing projects to address chloroprene emissions from the “Poly Kettle Strainer Waste” that would eliminate use of the Outside Brine Pit for “Poly Kettle Strainer Waste” (“Emission Reduction Projects”).

4.5.3.1. If Respondent determines that testing of an “Emission Reduction Project” is successful (subject to the review and approval of EPA), Respondent must submit to EPA for approval an Alternative Management Plan for storing and managing the “Poly Kettle Strainer Waste” in accordance with the approved “Emission Reduction Project.” The Alternative Management Plan must, at a minimum, require that Respondent: (1) store “Poly Kettle Strainer Waste” in

containers that meet RCRA Subtitle C requirements and are placed in a spill berm or other secondary containment; and (2) transport and dispose containers of "Poly Kettle Strainer Waste" in accordance with RCRA Subtitle C requirements. Within 30 days of EPA's approval of Respondent's Alternative Management Plan, Respondent must commence implementation of the Plan for all "Poly Kettle Strainer Waste." Upon implementation of Respondent's approved Alternative Management Plan, Respondent's handling of "Poly Kettle Strainer Waste" is no longer subject to Paragraph 4.5.2.

4.5.3.2. Respondent shall confer with EPA on a biweekly basis to report the status of the Emission Reduction Project testing until Respondent's implementation of the Alternative Management Plan.

4.5.3.3. If Respondent determines an "Emission Reduction Project" is not successful, then Respondent shall promptly propose an alternative project to address emissions associated with the "Poly Kettle Strainer Waste," which shall be subject to EPA review and approval and must be tested and, if testing is

successful, implemented in accordance with an Alternative Management Plan proposed by Respondent and approved by EPA that meets the requirements of Paragraph 4.5.3.1.

4.5.4. **Waste Determination Plan:** Within sixty (60) days of the Effective Date, Respondent must submit to EPA for review and comment a draft Waste Determination Plan that meets the requirements of LAC 33:V.1103 (40 C.F.R. § 262.11) and considers SW-846 (Chapter 9), and may be further modified or revised to address specific “Product Groups.” Beginning ninety (90) days after the Effective Date and until March 31, 2024, within thirty (30) days of beginning production of any “Product Group” (which has not previously been subject to a waste determination pursuant to this Agreement), Respondent must submit for EPA approval a “Waste Determination Plan” that meets the requirements of LAC 33:V.1103 (40 C.F.R. § 262.11) and considers SW-846 (Chapter 9).

4.5.4.1. Respondent must begin sampling “Poly Kettle Strainer Waste” in accordance with the EPA-approved “Waste Determination Plan” within 30 days of EPA’s approval of Respondent’s “Waste Determination Plan.” Within 30 days

of receiving such sampling results for a “Product Group,” Respondent must submit to EPA a waste determination for the “Poly Kettle Strainer Waste” generated from such “Product Group” that: (i) meets the requirements of 40 LAC 33:V.1103 (C.F.R. § 262.11) and considers SW-846 (Chapter 9); and (ii) considers and includes all of the analytical results of sampling conducted in accordance with the EPA-approved “Waste Determination Plan.”

4.5.4.2. If Respondent’s waste determination concludes that the “Poly Kettle Strainer Waste” generated from a “Product Group” is a hazardous waste, Respondent shall develop and submit within 30 days, for EPA approval, a Waste Management Plan and proposed schedule for Respondent to come into compliance with RCRA Subtitle C requirements for such waste. Upon implementation of the EPA-approved Waste Management Plan, Respondent shall be relieved of its Alternative Management Plan obligations for such waste in Paragraph 4.5.3.1; provided, however that Respondent’s obligations to comply with the EPA-approved “Emission Reduction Project” shall continue until such obligations are incorporated into Respondent’s air permits.

4.5.4.3. If Respondent's waste determination concludes that the "Poly Kettle Strainer Waste" associated with a "Product Group" is not hazardous waste, Respondent shall be relieved of its Alternative Management Plan obligations for such waste in Paragraph 4.5.3.1; provided, however that Respondent's obligations to comply with the EPA-approved "Emission Reduction Project" shall continue until such obligations are incorporated into Respondent's air permits.

4.5.4.4. **Definition of "Product Group":** A "Product Group" may include one or more of Respondent's products that generates "Poly Kettle Strainer Waste" and be defined by Respondent based on its process knowledge and submittal of information to EPA describing the anticipated waste properties and concentrations of chloroprene in the emulsion of products within the "Product Group" are similar. To the extent Respondent relies upon a Waste Determination for other products in the "Product Group" in lieu of completing Waste Determination Plan sampling as described in Paragraph 4.5.4, Respondent shall specify and provide documentation supporting the process knowledge that forms the basis for

applying the Waste Determination to such other products in the Product Group.

- 4.5.5. **Additional Environmental Justice Considerations for Disposal/Transportation:** After the Effective Date, in selecting the disposal site and method of disposal for “Poly Kettle Strainer Waste” in accordance with RCRA Subtitle C requirements, Respondent shall consider EPA’s EJScreen: Environmental Justice Screening and Mapping Tool for the community in which a disposal site is located. After the Effective Date, in selecting the mode of transportation for the “Poly Kettle Strainer Waste” in accordance with Subtitle C requirements, Respondent shall consider transportation by low emission vehicles (“LEV”). For purposes of this Consent Agreement, LEV shall mean vehicles that are equipped with diesel exhaust fluid (“DEF”) systems. DEF is a urea-based fluid which when added to the diesel fuel in appropriate amounts by the system improves the selective catalytic reduction which reduces emissions. If in the future, other types of low emission vehicles with emission reduction capabilities equal or superior to DEF are available to transport the “Poly Kettle Strainer Waste,” such vehicles may also be considered by



Respondent to transport the "Poly Kettle Strainer Waste" without modification of this Consent Agreement.

4.6. 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). 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  
[deppe.fred@epa.gov](mailto:deppe.fred@epa.gov)

Justin Young  
[young.justin@epa.gov](mailto:young.justin@epa.gov)

**RESPONDENT:**

Plant Manager  
Denka Performance Elastomer, LLC  
560 Highway 44  
LaPlace, LA 70068  
[jorge-lavastida@denka-pe.com](mailto:jorge-lavastida@denka-pe.com)

Manager of Environmental Affairs  
Denka Performance Elastomer, LLC  
560 Highway 44  
LaPlace, LA 70068  
[Christopher-Meyers@denka-pe.com](mailto:Christopher-Meyers@denka-pe.com)

With a copy to:

Robert Holden  
Jones Walker LLP  
D: 504.582.8139  
[BHolden@joneswalker.com](mailto:BHolden@joneswalker.com)

Jason Hutt  
Bracewell LLP  
D: 202.828.5850  
[Jason.Hutt@bracewell.com](mailto:Jason.Hutt@bracewell.com)

4.7. 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:

4.8. 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.

4.9. 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 30 days, or such other time as specified in the approved plan or document.

4.10. 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.

4.11. 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.

4.12. 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.

4.13. 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.

4.14. For all requirements contained in Paragraphs 4.5.1 through 4.5.5 above, Respondent must, within seven (7) days of each completed requirement, certify in writing to EPA and in accordance with Paragraph 4.7 that Respondent is in compliance with the requirements as set forth in Paragraphs 4.5.1 through 4.5.5.

4.15. 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.

4.16. Each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.17. Solely for the purpose of this Consent Agreement, the Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal or otherwise challenge this Consent Agreement or the Final Order that is attached to this Consent Agreement. 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.

4.18. Notwithstanding 40 C.F.R. § 22.31(a), this Consent Agreement does not resolve any civil or criminal claims for the violations alleged in this Consent Agreement, including claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as adjusted

by 40 C.F.R. Part 19. 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 action authorized under RCRA, or other applicable federal laws or regulation. This Consent Agreement does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

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

4.20. When Respondent believes that it has complied with all of the requirements in Paragraph 4.5 of this Consent Agreement, Respondent shall certify in writing in accordance with the certification language set forth in Paragraph 4.7 of this Consent Agreement. Unless EPA objects in writing within 60 days of EPA's receipt of Respondent's certification, this Consent Agreement will be terminated based on EPA's receipt of Respondent's certification.

4.21. This Consent Agreement and the attached proposed Final Order shall become effective upon execution of the Final Order by the Regional Judicial Officer and filing with the Regional Hearing Clerk ("Effective Date"). 40 C.F.R. §§ 22.18(b)(2) and 22.31(b).

4.22. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

DATED:

12/19/2022

FOR RESPONDENT:

清水 美基雄

Mikio Shimizu  
President & CEO  
Denka Performance Elastomer, LLC

DATED:  
12/20/2022

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FOR COMPLAINANT:

EARTHEA  
NANCE

Digitally signed by EARTHEA NANCE  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=EARTHEA NANCE,  
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Earthea Nance, PhD, PE  
Regional Administrator

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BEFORE THE REGIONAL HEARING CLERK  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY EPA REGION VI

In the Matter of: )  
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Respondent. )

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 6, who has redelegated this authority to the Regional Judicial Officer in EPA Region 6.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. Notwithstanding 40 C.F.R. § 22.31(a), this Consent Agreement does not resolve any civil or criminal claims for violations alleged in this Consent Agreement, including claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as adjusted by 40 C.F.R. Part 19. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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 does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 20 day of December, 2022.

THOMAS  
RUCKI

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
0.9.2342.19.200300.100.1.1-680010036558  
04  
Date: 2022.12.20 11:38:41 -05'00'

Thomas Rucki  
Regional Judicial Officer



Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Denka Performance Elastomer, LLC Docket No.: RCRA-06-2023-0906** was filed with the Hearing Clerk and served on the addressees in the following manner on the date specified below to the following email addresses:

The undersigned certifies that a true and correct copy of the document was delivered to:

[murdock.russell@epa.gov](mailto:murdock.russell@epa.gov)

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Plant Manager  
Denka Performance Elastomer, LLC  
560 Highway 44  
LaPlace, LA 70068  
[jorge-lavastida@denka-pe.com](mailto:jorge-lavastida@denka-pe.com)

DATED this \_\_20th\_\_ day of \_\_December\_\_, 2022.

ELIZABETH  
GEORGE

Digitally signed by  
ELIZABETH GEORGE  
Date: 2022.12.20 12:01:24  
-06'00'

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MS. Lori Jackson  
Paralegal