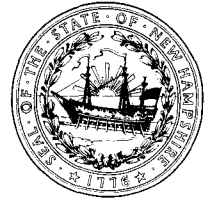




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 11, 2009

Markem-Imaje Corporation
Mark Fish, Director, Supply Chain
PO Box 2100
Keene, NH 03431

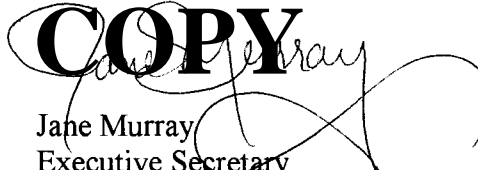
Re: Docket No. AF 09-009 - Administrative Fine by Consent Agreement

Dear Mr. Fish:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter. This letter does not provide relief against any existing or future violations.

Sincerely,

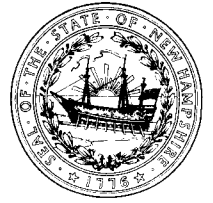
COPY

Jane Murray
Executive Secretary
DES Legal Unit

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau Head, NH DOJ
DES Public Information Officer
Keene City Council
Pamela Hoyt-Denison, P.E., Administrator, WMP
John J. Duclos, Administrator, HWMB-WMD
Linda R. Birmingham, HWMB-WMD

cc: DES Legal Unit



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Markem-Imaje Corporation
P.O. Box 2100
Keene, NH 03431

Re: 150 Congress Street, Keene, NH
EPA ID No. NHD001085158

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 09-009

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Markem-Imaje Corporation, pursuant to RSA 147-A:14. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Markem-Imaje Corporation ("Markem") is a New Hampshire corporation with a mailing address of P.O. Box 2100, Keene, NH, 03431. Markem's principal office is located at 150 Congress Street in Keene, New Hampshire.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations.
3. Markem is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 18, 1980. Markem is a manufacturer of software, printers and inks. EPA Identification Number NHD001085158 was assigned to Markem's site located at 150 Congress Street in Keene, New Hampshire (the "Facility").
4. On February 8, 2007 and February 22, 2007, DES personnel inspected the Facility for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency (“LOD”) No. WMD 07-009 to Markem on March 22, 2007. Based on the information provided in response to LOD No. WMD 07-009, DES issued Notices of Findings to Markem on May 16, 2007 and June 27, 2007. Based on the violations observed during the original inspections, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Markem failed to obtain a permit, as required by RSA 147-A:4, I/Env-Wm 353.04, for the operation of an Elementary Neutralization Unit (“ENU”) after Markem’s Permit-By-Rule expired on December 31, 1996 (“Violation 1”). For this violation, Env-C 612.03(a) authorizes a fine of \$2,000 per treatment or storage unit.
2. Markem failed to conduct a formal hazardous waste determination at the Facility, as required by Env-Wm 502.01, on the waste labpack materials located in the Main Outdoor Hazardous Waste Storage Area (“HWSA”); the unlabeled 55-gallon drum located in the boiler room; and the tumbler sludge generated from the tumbling operation (“Violation 2”). For these violations, Env-C 612.05(a) authorizes a fine of \$1,500 per determination not made, for a potential fine of \$4,500.
3. Markem failed to provide secondary containment, as required by Env-Wm 507.01(c), for one (1) 1-liter container of hazardous waste solvents located in a laboratory hood stored near a functional sink drain (“Violation 3”). For this violation, Env-C 612.06(e) authorizes a fine of \$2,000 per non-conforming storage area.
4. Markem failed to mark, as required by Env-Wm 507.03(a)(1)a, the one (1) 5-gallon container marked “Hazardous Waste, Labpack Epoxy Waste” stored in the HWSA; one (1) 5-gallon container marked “Hazardous Waste Lead” stored in the HWSA; and three (3) 55-gallon containers marked “Hazardous Waste, Spent Solvent for Recycle” stored in the Still Room with the beginning accumulation date (“Violation 4”). For these violations, Env-C 612.06(k) authorizes a fine of \$125 for each container that is less than 55-gallons and a fine of \$250 for each container that is 55-gallons or greater, for a potential fine of \$1,000.
5. Markem failed to properly mark, as required by Env-Wm 507.03(a)(1)d, one (1) 5-gallon container marked “Hazardous Waste, Labpack Epoxy Waste” and one (1) 5-gallon container marked “Hazardous Waste, Labpack Water Treatment 200 Bags” stored in the HWSA with the EPA or state waste number (“Violation 5”). For these violations, Env-C 612.06(l) authorizes a fine of \$300 for each container that is less than 55-gallons for a potential fine of \$600.
6. Markem failed to document inspections of the HWSA, as required by Env-Wm 509.02(a)(1), for a total of two (2) out of the 52 weeks during the previous year and failed to document inspections of the Still Room for a total of 52 of the 52 weeks during the previous year (“Violation 6”). For these violations, Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area. For settlement purposes only, DES will consider only the time period of seventeen (17) weeks prior to the date of the inspection. Since Markem performed all required inspections at the HWSA for the seventeen (17) weeks prior to the inspection, the Division is not seeking a fine for this area.

Markem failed to document inspections at the Still Room for seventeen (17) of the seventeen (17) weeks immediately prior to the inspection, for a potential fine of \$17,000.

7. Markem failed to maintain a personnel training program and provide hazardous waste training, as required by Env-Wm 509.02(a)(2), for the following employees with hazardous waste duties: two (2) years of annual training each for Emergency Coordinators Richard Berry and Richard Gatley; one (1) year of annual training for Emergency Coordinator Richard Larsen; three (3) years of annual training for Emergency Coordinator Russell Fiorey; and four (4) years of annual training for Emergency Coordinator Steve Przystac ("Violation 7"). For these violations, Env-C 612.07(b) authorizes a fine of \$1,000 per individual not trained for annual updates, for a potential fine of \$12,000.

8. Markem failed to maintain a complete contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 8"). For this violation, Env-C 612.07(e) authorizes a fine of \$2,000.

9. Markem failed to post adequate emergency information at the nearest telephone to the Still Room, as required by Env-Wm 509.02(b) ("Violation 9"). For this violation, Env-C 612.07(h) authorizes a fine of \$1,000 per area.

10. Markem failed to manage, as required by Env-Wm 509.03, one (1) 55-gallon satellite storage container of hazardous waste "Waste Ink, Spent Solvent, D001, F003" located in the Chemical Dispersion Laboratory (waste stream generated in Chemical R&D Laboratory); one (1) 55-gallon satellite storage container of hazardous waste "Waste Ink, Spent Solvent & Debris, Flammable, D001, F003, F004, D026" located in the Ink Milling Area (waste stream generated in Still Room) and one (1) 55-gallon satellite storage container of hazardous waste "Waste Ink, Spent Solvent, D001, F003" located in the Ink Milling Area (waste stream generated in Pharmaceutical Inks Area) "at or near the point of generation"; and (1) 55-gallon satellite storage container of hazardous waste "Spent 500 Cleaner" located in the Chemical Warehouse (waste stream generated in Ink Milling Area) "at or near the point of generation" and was not "under the control of the operator" ("Violation 10"). For these violations, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$3,000.

11. Markem failed to keep the following hazardous waste satellite containers closed, except when in use, as required by Env-Wm 509.03(d) and Env-Wm 507.01(a)(3) ("Violation 11"):

- a. One (1) 55-gallon container of hazardous waste "Waste Ink and Spent Solvent" located in the Chemical Dispersion Laboratory;
- b. One (1) 30-gallon container of hazardous waste "Acrylates/Monomers" located in the R&D Laboratory;
- c. Two (2) 55-gallon containers of hazardous waste acetone, previously used to store contaminated wipers, located in the Ink Milling area;
- d. One (1) 55-gallon container of hazardous waste "Waste Ink Solvent" located in the Ink Milling area;
- e. One (1) 55-gallon container of hazardous waste "Waste Ink Solvent and Debris" located in the Ink Milling area;
- f. One (1) 55-gallon container of hazardous waste "Spent Solvent" located in the Ink Milling area;

- g. Two (2) 1-gallon containers of hazardous waste "Chemical Waste Solvent" located in the Base Mixing Room;
- h. One (1) 1-quart container of hazardous waste "Solvent" located in the Base Mixing Room;
- i. One (1) 55-gallon container of hazardous waste "Spent Solvent for Recycle" located in the UV Inks Room;
- j. One (1) 55-gallon container of hazardous waste "Vacuum Condensate Discharge" located in the Hot Melt Jet Ink Make Room;
- k. One (1) 30-gallon container of hazardous waste "Spent Photographic Chemicals" located in the Photo Processing Area;
- l. One (1) 30-gallon container of hazardous waste "Photographic Waste and Debris" located in the Photo Processing Area; and
- m. One (1) 30-gallon container of hazardous waste "Waste Monomers" located in the UV Ink Jet Area.

For these violations, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$8,000.

12. Markem failed to mark, as required by Env-Wm 509.03(g), the following eighteen (18) satellite storage containers of hazardous waste with the words "hazardous waste" or words describing the contents of the container ("Violation 12"):

- a. Three (3) 5-gallon containers of hazardous waste solvent debris located in the R&D Laboratory;
- b. Four (4) 5-gallon containers of hazardous waste solvent debris located in the Ink Milling Area;
- c. One (1) 30-gallon container of hazardous waste solvent debris located in the Ink Milling Area;
- d. One (1) 5-gallon container of hazardous waste solvent debris located in the QA Laboratory;
- e. One (1) 5-gallon container of hazardous waste solvent debris located in the Analytical Laboratory;
- f. One (1) 5-gallon container of hazardous waste solvent debris located in the Photo Processing Area;
- g. One (1) 5-gallon container of hazardous waste solvent debris located in the Hot Melt QA Laboratory;
- h. Two (2) 55-gallon satellite storage containers of acetone from contaminated cloth wipers located in the Ink Milling Area;
- i. One (1) 5-gallon hazardous waste satellite storage container used to store Epoxy Waste located in the UV Ink Jet Area (not marked with the words "hazardous waste");
- j. Two (2) hazardous waste satellite storage containers of hazardous waste solvent located in the Chemical R&D Analytical Laboratory; and
- k. One (1) 5-gallon hazardous waste satellite storage container of hazardous waste solvent debris located in the R&D Laboratory (not marked with words describing the contents).

For these violations, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$8,000.

13. Markem failed to clearly mark, as required by Env-Wm 1102.03 and Env-Wm 1109.04, four (4) 5-gallon containers of universal waste batteries stored in the Tin Shed with any of the following: "Universal Waste-Battery (ies)," "Waste Battery (ies)," or "Used Battery (ies)" ("Violation 13"). DES has determined these violations to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$200.

14. Markem failed to mark twelve (12) 4-ft boxes of universal waste lamps and one (1) small box of U-Shaped and circular universal waste lamps observed in the Boiler Room with any of the following markings: "Universal Waste – Lamps(s)," "Waste Lamp(s)," or "Used Lamp(s)," as required by Env-Wm 1102.03 and Env-Wm 1112.04 ("Violation 14"). DES has determined these violations to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$650.

15. Markem failed to mark, as required by Env-Wm 1102.03 and Env-Wm 1113.04, one (1) cubic yard tote containing computer monitors located in the Tin shed with any of the following markings: "Universal Waste – Cathode Ray Tube(s)," "Waste Cathode Ray Tube(s)," or "Used Cathode Ray Tube(s)" ("Violation 15"). DES has determined this violation to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$100.

16. Markem failed to keep closed as required by Env-Wm 1102.03(c)(1), the twelve (12) 4-ft boxes of universal waste lamps and one (1) small box of U-Shaped and circular universal waste lamps observed in the Boiler Room, except to add or remove universal waste ("Violation 16"). DES has determined these violations to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$195.

17. Markem failed to provide accurate information, as required by Env-Wm 510.03(b)(1), on three (3) hazardous waste manifests (i.e., Manifest Number: NJA5263577 on June 14, 2005, Manifest Number: NJA5205767 on December 20, 2004; and Manifest Number: NJA5107075 on July 6, 2004) ("Violation 17"). For these violations, Env-C 612.04(b) authorizes a fine of \$500 per shipment, for a potential fine of \$1,500.

18. Markem failed to pay the quarterly hazardous waste generator fee, as required by Env-Wm 512.02(c), for 2,553 pounds manifested in three (3) quarters (i.e., third quarter of 2004; fourth quarter of 2004; and second quarter of 2005) ("Violation 18"). For settlement purposes only, DES is not seeking a fine for these violations. These violations arise from the same acts or omissions as described in the previous paragraph.

19. Markem failed to certify the accuracy of three (3) quarterly reports by a responsible company official, as required by Env-Wm 512.02(g)(7). Markem certified three (3) inaccurate quarterly reports ("Violation 19"). For settlement purposes only, DES is not seeking a fine for these violations. These violations arise from the same acts or omissions as described in the following paragraph.

20. Markem failed to correctly categorize materials that are to be recycled, as required by Env-Wm 803.02 (i.e., Barium Sulfate, Barium Carbonate and Chromium) ("Violation 20"). DES has

determined that these violations to be a major deviation from the requirements and a major potential for harm, for which Env-C 610 specifies a fine of between \$1,500 and \$2,000. DES proposes a fine of \$2,000 per categorization for a potential fine of \$6,000.

21. Markem failed to conduct a formal hazardous waste determination, as required by Env-Wm 502.01, on the spent acid and rinses generated from etching stainless steel and the evaporator sludge ("Violation 21"). For these violations, Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$3,000.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 2, 3, 5, 7 through 9 and 13 through 16 because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 1, 4, 6, 10, 11, 12, 17, 20 and 21 which are Class I violations:

a. Violation 1 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$2,000 for Violation 1;

b. Violation 4 is a Class I violation. Markem provided information that the "Hazardous Waste Lead" was lead for recycle. DES is thus seeking a fine for failing to mark the one (1) 5-gallon container marked "Hazardous Waste, Labpack Epoxy Waste" stored in the HWSA; and three (3) 55-gallon containers marked "Hazardous Waste, Spent Solvent for Recycle" stored in the Still Room with the beginning accumulation date, for a proposed penalty of \$875. In addition, DES has determined due to Markem's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$700 for Violation 4;

c. Violation 6 is a Class I violation. DES has determined due to Markem's good faith effort to comply and other circumstances that a 40% reduction should be applied (i.e., good faith effort to comply (20%) and other circumstances (20%)). DES is thus seeking a fine of \$10,200 for Violation 6;

d. Violation 10 is a Class I violation. The fine was revised to the amount of \$1,000 because one (1) satellite area is included in the fine sought for Violation 11 and one (1) satellite area is included in the fine sought for Violation 12. DES has determined due to Markem's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$800 for Violation 10;

e. Violation 11 is a Class I violation. The fine was revised to the amount of \$4,000 because four (4) satellite areas are included in the fine sought for Violation 12. DES has determined due to Markem's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$3,200 for Violation 11;

f. Violation 12 is a Class I violation. DES has determined due to Markem's high level of cooperation in providing information and its effort to correct the violation that a 20% reduction should be applied. DES is thus seeking a fine of \$6,400 for Violation 12;

g. Violation 17 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$1,500 for Violation 17;

h. Violation 20 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$6,000 for Violation 20; and

i. Violation 21 is a Class I violation. DES has determined due to Markem's good faith effort to comply that a 20% reduction should be applied for the hazardous waste determination for the sludge only (i.e., (20%) X \$1,500 for the sludge + \$1,500 for the spent acid and rinses). DES is thus seeking a fine of \$2,700 for Violation 21.

3. The total administrative fines for the Class I violations above is \$33,500.

4. Markem agrees to pay \$19,358 of the total amount due, \$33,500, upon execution of this Agreement.

5. Markem shall undertake a supplemental environmental project ("SEP") and expend at least \$28,284 to retain an independent third party consultant(s) to assist Markem in the development and implementation of the Environmental Management System ISO 14001. Markem will confirm that the project manager(s) from the independent third party consultant(s) has the expertise and competence in the regulatory programs under federal and state environmental laws. The SEP is valued at a 2:1 ratio (i.e., for every two dollars spent on the SEP or \$28,284, one dollar is credited towards the remaining fine amount due of \$14,142). The SEP is not otherwise required by virtue of any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. The SEP will serve as a valuable tool to help Markem improve their environmental performance, increase the use of pollution prevention and improve compliance. Markem shall certify to DES within one (1) year of the effective date of this Agreement that the SEP has been completed and that at least \$28,284 in eligible consultant costs were incurred. Markem shall submit with this certification, copies of purchase orders and receipts or cancelled checks. Markem shall also submit the Environmental Management Systems Manual to DES for review upon completion. If the final cost for consultant services does not reach the \$28,284 commitment, then any remainder of the amount due, \$14,142, not paid through SEP credits will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund within ten (10) days of the one (1) year anniversary of the Agreement.

6. Payments under paragraph "V.4" and any payment that becomes due pursuant to paragraph "V.5" shall be paid by certified check made payable to "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Legal Assistant
PO Box 95
Concord, NH 03302-0095

7. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

8. By executing this Administrative Fine by Consent, Markem waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Markem, the Director of the Waste Management Division, and the Commissioner of DES.

10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Markem-Imaje Corporation

~~COPY~~
By: Mark Fish, Director, Supply Chain
Duly Authorized

25-FEB-09
Date

Department of Environmental Services

~~COPY~~
Michael J. Wimsatt, P.G., Director
Waste Management Division

3/5/09
Date

~~COPY~~
Thomas S. Burack, Commissioner

3/9/09
Date

cc: DES Legal Unit
RCRA/DB/AF

cc: Keene City Council
Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Pamela Hoyt-Denison, P.E., Administrator, WMP
John J. Duclos, Administrator, HWMB-WMD
Linda R. Birmingham, HWMB-WMD