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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

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In the matter of	)	U.S. EPA Docket No
	)	RCRA-9-2012- 0006
Western Digital Corporation,	)	
	)	
	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
Respondent.	)	40 C.F.R. SECTIONS 22.13 AND
_____	)	22.18

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency, Region IX ("Complainant" or "EPA"), and Respondent, Western Digital Corporation ("Respondent"), the parties herein, having agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, ("CA/FO"), without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, Complainant and Respondent hereby agree as follows:

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Western Digital Corporation ("Respondent" or "WD").
2. Respondent owns and operates a wafer fabrication facility located at 44100 Osgood Avenue, in Fremont, California, 94539 (the "Facility").
3. At the time of the violations alleged, Respondent generated spent solvents, wipes/debris contaminated with acids and bases, waste solutions, wipes/debris from laboratory operations, waste copper sulfate solutions, and universal waste bulbs at the Facility.
4. At the time of the violations alleged, Respondent was a large quantity generator ("LQG") of hazardous waste.

5. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent managed hazardous waste in violation of the RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921 - 6939e, the implementing regulations, and state regulations adopted pursuant to the federally authorized California hazardous waste management program.
6. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States.
7. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. This authorization was updated on September 26, 2001 (*see* 66 Fed. Reg. 49118, September 26, 2001). The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code ("H&SC"), and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.<sup>1</sup> Citations in this CA/FO are to California hazardous waste management program requirements, followed by the corresponding federal citations provided in brackets.

**B. GENERAL ALLEGATIONS**

8. Respondent is, and at all times referred to herein was, a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. Respondent was the "owner" or "operator" of the facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.
10. At the Facility, Respondent was a "generator" of "hazardous waste" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.
11. At the Facility, Respondent was engaged in the "storage" of "hazardous waste" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

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<sup>1</sup> All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing the California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992) and the Final Authorization of Revisions to the Hazardous Waste Management Program as approved and authorized by the United States on September 26, 2001 (*see* 66 FR 49118, September 26, 2001). Citations to the federal regulations are included for informational purposes.

12. At the Facility, Respondent generated and accumulated materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
13. At the Facility, Respondent generated and accumulated “hazardous waste” as defined in California H&SC § 25117 and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA Section 1004(5), 42 U.S.C. 6903(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to: spent solvents, wipes/debris contaminated with acids and bases, waste solutions, wipe/debris from laboratory operations, waste copper sulfate solutions, and universal waste bulbs.
14. On December 13, 2010, EPA conducted a RCRA Compliance Evaluation Inspection (“CEI”) at the Facility.
15. Based upon the findings EPA made during the inspections and additional information obtained subsequent to the inspections, EPA alleges that Respondent violated RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921 – 6939e, and the implementing regulations, and the federally authorized California hazardous waste management program, 22 C.C.R. Division 4.5, and the implementing regulations at the Facility.
16. EPA alleges that Respondent failed to (1) properly label hazardous waste containers, including failure to include the accumulation start date and detail of the waste, in violation of 22 C.C.R. §§ 66262.34(a), (e)(1), (f) and 66273.34(c) [40 C.F.R. §§ 262.34(a)(2), (a)(3), (c)(1)(ii), and 273.14(e)]; (2) keep hazardous waste storage containers closed in violation of 22 C.C.R. §§ 66265.173(a) and 66273.33(b) [40 C.F.R. §§ 265.173(a) and 273.13(d)(1)]; (3) failure to contain broken lamps in violation of 22 C.C.R. § 66273.33(b) [40 C.F.R. § 273.14(e)]; (4) adequately train personnel in violation of 22 C.C.R. § 66265.16 [40 C.F.R. § 265.16]; (5) provide an adequate contingency plan in violation of 22 C.C.R. § 66265.52(e) [40 C.F.R. § 265.52(e)]; (6) provide secondary containment for tanks in violation of 22 C.C.R. § 66265.193(f) [40 C.F.R. § 265.193(f)]; (7) properly identify, mark and monitor equipment in violation of 22 C.C.R. §§ 66265.1064(b), 66265.1050(c), 66265.1052(a) and 66265.1057(a) [40 C.F.R. §§ 265.1064(b), 265.1050(c), 265.1052(a) and 265.1057(a)]; (8) properly equip open-ended valves in violation of 22 C.C.R. § 66265.1056(a)(1) [40 C.F.R. § 265.1056(a)(1)]; (9) maintain records of determinations of the maximum organic vapor pressure of the waste solvent storage tank in violation of 22 C.C.R. § 66265.1090(b)(2)(A) [40 C.F.R. § 265.1090(b)(2)(i)]; (10) maintain records of waste solvent storage tank inspections in violation of 22 C.C.R. §§ 66265.1085(c) and 66265.1090(b)(1) [40 C.F.R. §§ 265.1085(c), and 265.1090(b)(1)]; (11) control emissions from the waste solvent storage tank in violation of 22 C.C.R. §§ 66265.1083(b) and 66265.1085(c)(2) [40 C.F.R. §§ 265.1083(b) and 265.1085(c)(2)]; and (12) provide a leak detection system in violation of 22 C.C.R. § 66265.193(f) [40 C.F.R. § 265.193 (f)].
17. Under Section 3006 of RCRA, 42 U.S.C. § 6926, violations of the State of California’s authorized RCRA Hazardous Waste Management Program are federally enforceable.

Respondent is therefore subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

18. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty for any past or current violation, or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Sections 3001 - 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e.
19. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to issuing an order under Section 3008 of RCRA in that state. EPA notified the State of California as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
20. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Properly Label and Accumulation Start Date

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.
22. 22 C.C.R. §§ 66262.34(a), (e)(1), and (f) [*see also* 40 C.F.R. §§ 262.34(a)(2), (a)(3) and (c)(1)(ii)] requires that generators who accumulate hazardous waste clearly mark the container with the date the accumulation begins and the words "Hazardous Waste." Additionally the label must state (A) the composition and physical state of the wastes; (B) statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.); and (C) the name and address of the person producing the waste.
23. 22 C.C.R. § 66273.34(c) [*see also* 40 C.F.R. § 273.14(e)] requires that a container with waste lamps be clearly labeled "Universal Waste-Lamp(s)."
24. At the Facility, on December 13, 2010, the EPA inspector observed that six containers of laboratory debris containing hazardous waste were not marked with accumulation start dates, one container of waste solvent was not marked with an accumulation start date nor a description of the hazardous waste it contained, and the accumulation label on the waste solvent tank was too faded to read, in violation of 22 C.C.R. §§ 66262.34(a), (e)(1) and (f) [*see also* 40 C.F.R. §§ 262.34(a)(2), (a)(3) and (c)(1)(ii)].

25. At the Facility, on December 13, 2010, the EPA inspector observed a container with waste lamps that had a label that was not visible, nine spent lamps wrapped in electrical tape that were not labeled, and six boxes of spent lamps that were not labeled, in violation of 22 C.C.R. § 66273.34(c) [*see also* 40 C.F.R. § 273.14(e)].
26. Accordingly, EPA alleges that Respondent violated 22 C.C.R. §§ 66262.34(a), (e)(1), (f), and 66273.34(c) [*see also* 40 C.F.R. §§ 262.34(a)(2), (a)(3), (c)(1)(ii), and 273.14(e)].

## **COUNT II**

### **Failure to Keep Hazardous Waste Storage Containers Closed**

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)] requires that a container holding hazardous waste must always be closed during transfer and storage, except when it is necessary to add or remove waste.
29. 22 C.C.R. § 66273.33(b) [*see also* 40 C.F.R. § 273.13(d)(1)] requires that a universal waste handler manage lamps in a way that prevents releases of any universal waste or component of universal waste to the environment. Specifically, a universal waste handler shall contain any lamp in a container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the lamp. Such a container or package shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
30. At the Facility, on December 13, 2010, the EPA inspector observed that two containers containing hazardous waste were not closed, in violation of 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 275.173(a)].
31. At the Facility, on December 13, 2010, the EPA inspector observed nine spent lamps wrapped in electrical tape that were not in a container, four boxes of spent lamps that were not closed, and one spent lamp that was not in a container, in violation of 22 C.C.R. § 66273.33(b) [*see also* 40 C.F.R. § 273.13(d)(1)].
32. Accordingly, EPA alleges that Respondent violated 22 C.C.R. §§ 66265.173(a), and 66273.33(b) [*see also* 40 C.F.R. §§ 265.173(a), and 273.13(d)(1)].

## **COUNT III**

### **Failure to Contain Broken Lamps**

33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were set forth here in their entirety.

34. 22 C.C.R. § 66273.33(b) [*see also* 40 C.F.R. § 273.14(e)] requires that a universal waste handler immediately clean up and place in a container any lamp that is broken or shows evidence of leakage or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.
35. At the Facility, on December 13, 2010, the EPA inspector observed two broken lamps that had not been placed in a container, in violation of 22 C.C.R. § 66273.33(b) [*see also* 40 C.F.R. § 273.14(e)].
36. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66273.33(b) [*see also* 40 C.F.R. § 273.14(e)].

#### COUNT IV

##### Failure to Adequately Train Personnel

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16] requires that facility personnel be trained to ensure that they perform their duties in compliance with the hazardous waste requirements of this chapter. The training program must be directed by a person trained in hazardous waste management procedures. Personnel must have initial training within six months of starting employment and receive refresher training annually. The owner or operator must maintain all training records and documents detailing the job title for each position related to hazardous waste management, the name of the employee filling each job, a written job description of each position, and the required training for each position.
39. At the Facility, on December 13, 2010, Respondent was unable to produce records of the hazardous waste management duties, initial and refresher training requirements and hazardous waste management training for two employees, in violation of 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16].
40. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.16 [*see also* 40 C.F.R. § 265.16].

#### COUNT V

##### Failure to Provide an Adequate Contingency Plan

41. Paragraphs 1 through 40 above are incorporated herein by this reference as if they were set forth here in their entirety.

42. 22 C.C.R. § 66265.52(e) [*see also* 40 C.F.R. § 265.52(e)] requires that the Contingency Plan include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.
43. At the Facility, on December 13, 2010, the EPA inspector found that the Facility's contingency plan did not include brief outlines of the capabilities of the emergency equipment, in violation of 22 C.C.R. § 66265.52(e) [*see also* 40 C.F.R. § 265.52(e)].
44. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.52(e) [*see also* 40 C.F.R. § 265.52(e)].

### COUNT VI

#### Failure to Provide Secondary Containment

45. Paragraphs 1 through 44 above are incorporated herein by this reference as if they were set forth here in their entirety.
46. 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)] requires that ancillary equipment be provided with full secondary containment.
47. At the Facility, on December 13, 2010, the EPA inspector observed that certain areas of the ancillary equipment from the waste solvent storage tank which leads to the pump-out area was not provided with secondary containment, in violation of 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)].
48. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)].

### COUNT VII

#### Failure to Properly Identify, Mark and Monitor Equipment

49. Paragraphs 1 through 48 above are incorporated herein by this reference as if they were set forth here in their entirety.
50. 22 C.C.R. § 66265.1064(b) [*see also* 40 C.F.R. § 265.1064(b)] requires that the owners and operators record the following information in the facility operating record: (1) for each piece of equipment to which this article applies: (A) equipment identification number and hazardous waste management unit identification; (B) approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan); (C) type of equipment (e.g., a pump or pipeline valve); (D) percent-by-weight total

organics in the hazardous waste stream at the equipment; (E) hazardous waste state at the equipment (e.g., gas/vapor or liquid); (F) method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).

51. On December 13, 2010, the facility was not able to provide any of the required equipment identification records, in violation of 22 C.C.R. § 66265.1064(b) [*see also* 40 C.F.R. § 265.1064(b)].
52. 22 C.C.R. § 66265.1050(c) [*see also* 40 C.F.R. § 265.1050(c)] requires that each piece of equipment shall be marked in such a manner that it can readily be distinguished from other pieces of equipment.
53. On December 13, 2010, EPA inspectors observed that none of the equipment subject to this requirement was marked, in violation of 22 C.C.R. § 66265.1064(b) [*see also* 40 C.F.R. § 265.1064(b)].
54. 22 C.C.R. § 66265.1052(a) [*see also* 40 C.F.R. § 265.1052(a)] requires that each pump in light liquid service be monitored monthly and checked by visual inspection weekly for indications of leakage.
55. 22 C.C.R. § 66265.1057(a) [*see also* 40 C.F.R. § 265.1057(a)] requires that each valve in gas/vapor or light liquid service be monitored monthly to detect leaks.
56. On December 13, 2010, the facility was not able to provide to EPA inspectors the required monitoring records, in violation of 22 C.C.R. §§ 66265.1052(a) and 66265.1057(a) [*see also* 40 C.F.R. §§ 265.1052(a) and 265.1057(a)].
57. Accordingly, EPA alleges that Respondent violated 22 C.C.R. §§ 66265.1064(b), 66265.1050(c), 66265.1052(a) and 66265.1057(a) [*see also* 40 C.F.R. §§ 265.1064(b), 265.1050(c), 265.1052(a) and 265.1057(a)].

### COUNT VIII

#### Failure to Properly Equip Open-Ended Valves

58. Paragraphs 1 through 57 above are incorporated herein by this reference as if they were set forth here in their entirety.
59. 22 C.C.R. § 66265.1056(a)(1) [*see also* 40 C.F.R. § 265.1056(a)(1)] requires that each open-ended valve or line be equipped with a cap, blind flange, plug or a second valve.
60. On December 13, 2010, EPA inspectors observed an open-ended valve that was not equipped with a cap, blind flange, plug or a second valve, in violation of 22 C.C.R. § 66265.1056(a)(1) [*see also* 40 C.F.R. § 265.1056(a)(1)].

61. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.1056(a)(1) [*see also* 40 C.F.R. § 265.1056(a)(1)].

### **COUNT IX**

#### **Failure to Maintain Records of Determinations of Maximum Organic Vapor Pressure**

62. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.
63. 22 C.C.R. § 66265.1090(b)(2)(A) [*see also* 40 C.F.R. § 265.1090(b)(2)(i)] requires that the owner or operator of a tank using air emissions controls prepare and maintain records for the tank. Specifically, if the owner or operator is using a fixed roof to comply with the Tank Level I control requirements specified in section 66265.1085(c), he or she must prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of section 66265.1085(c). The records must include the date and time the samples were collected, the analysis method used, and the analysis results.
64. On December 13, 2010, the facility was not able to provide a record of the determination for the maximum organic vapor pressure of the hazardous waste in the waste solvent storage tank, in violation of 22 C.C.R. § 66265.1090(b)(2)(A) [*see also* 40 C.F.R. § 265.1090(b)(2)(i)].
65. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.1090(b)(2)(A) [*see also* 40 C.F.R. § 265.1090(b)(2)(i)].

### **COUNT X**

#### **Failure to Maintain Records of Tank Inspections**

66. Paragraphs 1 through 65 above are incorporated herein by this reference as if they were set forth here in their entirety.
67. 22 C.C.R. § 66265.1090(b)(1) [*see also* 40 C.F.R. § 265.1090(b)(1)] requires that the owner or operator of a tank using air emissions controls prepare and maintain records for the tank including a tank identification number and a record of each inspection required by 22 C.C.R. § 66265.1085.
68. 22 C.C.R. § 66265.1085(c)(4) [*see also* 40 C.F.R. § 265.1085(c)(4)] requires that an owner or operator of a tank using air emissions controls provide annual visual inspections for defects in fixed roof and closure devices. The owner or operator must maintain a record of these inspections.
69. On December 13, 2010, the Facility was not able to provide the required records of tank or tank air emissions control inspections for the waste solvent storage tank, in violation of

22 C.C.R. §§ 66265.1090(b)(1) and 66265.1085(c)(4) [*see also* 40 C.F.R. §§ 265.1090(b)(1) and 265.1085(c)(4)].

70. Accordingly, EPA alleges that Respondent violated 22 C.C.R. §§ 66265.1090(b)(1) and 66265.1085(c)(4) [*see also* 40 C.F.R. §§ 265.1090(b)(1) and 265.1085(c)(4)].

### **COUNT XI**

#### **Failure to Control Tank Emissions**

71. Paragraphs 1 through 70 above are incorporated herein by this reference as if they were set forth here in their entirety.
72. 22 C.C.R. § 66265.1083(b) [*see also* 40 C.F.R. § 265.1083(b)] requires that the owner or operator control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in 22 C.C.R. §§ 66265.1085 through 1088 as applicable to the hazardous waste management unit.
73. 22 C.C.R. § 66265.1085(c)(2) [*see also* 40 C.F.R. § 265.1085(c)(2)] requires that an owner or operator controlling air pollutant emissions from a tank using Tank Level I controls equip the tank with a fixed roof designed so that each opening in the fixed roof, and any manifold system associated with the fixed roof, be either: (1) equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or (2) connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in subsections (c)(2)(C)2.a and (c)(2)(C)2.b of that section.
74. On December 13, 2010, EPA inspectors observed that the vent pipe from the waste solvent storage tank vented directly to the air, in violation of 22 C.C.R. §§ 66265.1083(b) and 66265.1085(c)(2) [*see also* 40 C.F.R. §§ 265.1083(b) and 265.1085(c)(2)].
75. Accordingly, EPA alleges that Respondent violated 22 C.C.R. §§ 66265.1083(b) and 66265.1085(c)(2) [*see also* 40 C.F.R. §§ 265.1083(b) and 265.1085(c)(2)].

### **COUNT XII**

#### **Failure to Provide a Leak Detection System**

76. Paragraphs 1 through 75 above are incorporated herein by this reference as if they were set forth here in their entirety.
77. 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)] requires that ancillary equipment be provided with full secondary containment and that the secondary

containment systems be capable of detecting and collecting releases and accumulated liquids until the collected material is removed. At a minimum, the secondary containment systems must have a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours.

78. The secondary containment area for the waste solvent storage tank is equipped with a leak detection system. Respondent's March 24, 2011 response to EPA's February 17, 2011 Notice of Violation showed that the trench which contained the ancillary equipment which leads to the inlet of the waste solvent storage tank was sealed off from the secondary containment area. This trench did not have a leak detection system, in violation of 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)].
79. Accordingly, EPA alleges that Respondent violated 22 C.C.R. § 66265.193(f) [*see also* 40 C.F.R. § 265.193(f)].

D. CIVIL PENALTY

80. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to \$37,500 per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy."

E. ADMISSIONS AND WAIVERS OF RIGHTS

81. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

82. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

83. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
84. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
85. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

86. Respondent consents to the assessment of and agrees to pay a civil penalty of SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) in full and final settlement of the federal civil penalty claims set forth in this CA/FO. Entry of this CA/FO and payment by Respondent of the penalty shall resolve all civil claims of the United States for the violations alleged in this CA/FO.
87. Respondent shall submit payment of the SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

**Regular Mail:**

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

**Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

**Overnight Mail:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

**ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

**On Line Payment:**

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sfo1.1" in the search field

Open form and complete required fields

**If clarification regarding a particular method of payment remittance is needed, contact the**

*In re: Western Digital Corporation, page 13*

**EPA Cincinnati Finance Center at 513-487-2091.**

88. At the time payment is made, a copy of the check or evidence of wire transfer payment shall be sent to:

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

and

Kaoru Morimoto (WST-3)  
Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

89. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

90. In addition to the interest and per annum penalties described above, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Section G, Respondent agrees to pay Complainant a stipulated penalty in the amount of up to ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues.
91. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
92. All penalties shall be made payable by certified or cashier's check or wire transfer to "Treasurer of the United States" and shall be remitted as described in Paragraph 87.

93. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
94. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

95. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States, except as otherwise provided herein.
96. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
97. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
98. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

99. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

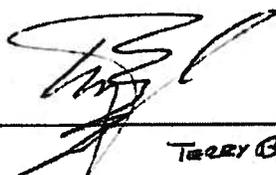
**K. MISCELLANEOUS**

100. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
101. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
102. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED,

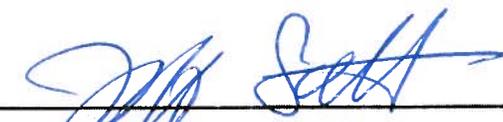
For Respondent **WESTERN DIGITAL CORPORATION**

12/21/11  
Date

  
\_\_\_\_\_  
Name, Title: TERRY BERGH  
VP NORTH FAS OPERATIONS  
Western Digital Corporation

For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

2/14/12  
Date

  
\_\_\_\_\_  
Jeff Scott, Director  
Waste Management Division  
U.S. Environmental Protection Agency, Region IX

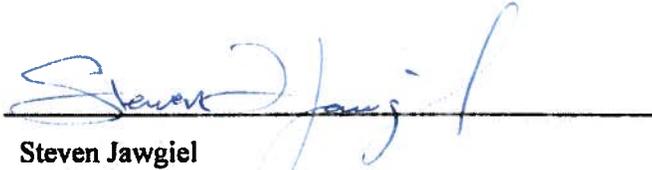
**FINAL ORDER**

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9-2012-0006) be entered and that Respondent pay a civil penalty of SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

02/21/12

Date



Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency,  
Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT, AND FINAL ORDER in the matter of Western Digital Corporation (RCRA-09-2012-0006) has been filed with the Regional Hearing Clerk, and a copy was served on Respondent, and on Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:  
(With Return Receipt)

Respondent -

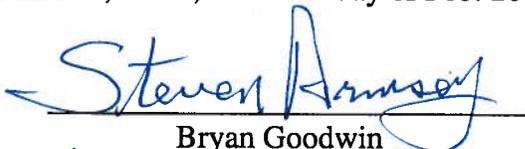
John F. Coyne  
President and CEO  
Western Digital Corporation  
3355 Michelson Drive (Suite 100)  
Irvine, CA 92612

HAND DELIVERED:

Complainant -  
(By Counsel)

Maya Kuttan, Esq.  
Office of Regional Counsel  
ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, CA. 94105

Dated at San Francisco, Calif., this 22nd day of Feb. 2012

  
for Bryan Goodwin  
Regional Hearing Clerk  
EPA, Region 9