UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:		
Bimax, Inc. **158 Industrial Road** **Glen Rock, PA 17327**	:	**Docket No. RCRA-03-2012-0210**
Respondent	:	**CONSENT AGREEMENT**
Bimax, Inc. **158 Industrial Road** **Glen Rock, PA 17327**	:	**Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, *as amended*, 42 U.S.C. § 6928(a) and (g).**
Facility.	:	

I. PRELIMINARY STATEMENTS

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Bimax, Inc. ("Bimax" or "Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commence and conclude this administrative proceeding against Bimax.

3. The Pennsylvania Hazardous Waste Management Regulations ("PaHWR"), 25 Pa. Code, Chapters 260a - 270a, were authorized by EPA on January 30, 1986 and reauthorized by EPA, effective November 27, 2000 (65 Fed. Reg. 57,734 (September 26, 2000)), effective March 22, 2004 (69 Fed. Reg. 2674 (January 20, 2004)) and effective June 29, 2009 (74 Fed. Reg. 19,453 (April 29, 2009)). The provisions of the authorized PaHWR,

through such authorization, have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporate, with certain exceptions, the following federal hazardous waste management regulations: regulations in effect as of May 1, 1999 were incorporated under the November 27, 2000 PaHWR authorization; regulations in effect as of June 28, 2001 were incorporated under the March 22, 2004 PaHWR authorization; and regulations in effect as of October 12, 2005 were incorporated under the April 29, 2009 PaHWR authorization. *See* 25 Pa. Code § 260a. 3(e).

5. On August 12, 2011, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, giving Pennsylvania prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. GENERAL PROVISIONS

6. Respondent admits the jurisdictional allegations set forth in this CAFO.

7. Respondent neither admits nor denies the specific factual allegations set forth in this CA, except as provided in Paragraph 6, above.

8. Respondent neither admits nor denies the conclusions of law set forth in this CA, except as provided in Paragraph 6, above.

9. For the purposes of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of this CAFO.

10. For the purposes of this proceeding, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Complainant's findings of fact and conclusions of law in accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

14. Respondent is a Pennsylvania corporation headquartered in Glen Rock, Pennsylvania.

15. Respondent is engaged in the manufacture of specialty monomers, surfactants and other chemicals at its facility located at 158 Industrial Road in Glen Rock, Pennsylvania ("Facility").

16. Respondent is, and was at the time of the violations alleged herein, a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1), and 25 Pa. Code § 260a.10.

17. The Facility is a hazardous waste "facility" as that term is defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1) and 25 Pa. Code § 260a.10.

18. Respondent is, and has been at all times relevant to this CA, the "owner" and "operator" of the Facility, as those terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1).

19. Respondent is, and has been at all times relevant to this CA, a "generator" of "solid waste" and "hazardous waste" at the Facility, as those terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1).

20. Respondent is, and has been at all times relevant to this CA, engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]", a "tank" and a "tank system" at its Facility, as the former term is defined in 25 Pa. Code § 260a.10 and as the latter terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1).

21. On March 9, 2000, Respondent originally notified EPA of its status as a large quantity generator of hazardous waste and more recently, on February 24, 2010, Respondent submitted a RCRA Subtitle C Site Identification Form (EPA Form 8700-12, OMB # 2050-0024) as part of its Hazardous Waste Report identifying itself as a large quantity generator of hazardous waste.

22. On March 9-10, 2011, a representative from EPA conducted a compliance evaluation inspection at the Facility to assess Respondent's compliance with federally authorized PaHWR requirements.

COUNT I
(Operating a treatment, storage, or disposal facility without a permit/interim status)

23. The allegations of Paragraphs 1 through 22 of this CA are incorporated herein by reference.

24. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage, or disposal of hazardous waste unless such person has first obtained a permit for the facility or qualifies for interim status for such facility.

25. Respondent has never been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.70, at any time.

26. 40 C.F.R. § 262.34(c), as incorporated by reference into 25 Pa. Code § 262a.10, provides in pertinent part that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(a), provided that such generator marks the containers of hazardous waste either with the words "Hazardous Waste" or with other words that identify the contents of the containers (commonly referred to as "satellite accumulation").

27. 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, provides, in pertinent part, that a generator of hazardous waste who accumulates hazardous waste in containers and tanks on-site for less than 90 days is exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of provisions set forth in that section, including, *inter alia*:

    a. 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts I, AA, BB and CC;

    b. 40 C.F.R. § 262.34(a)(1)(ii), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in tanks, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts J, AA, BB and CC;

c. 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container; and

d. 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste."

28. On March 9-10, 2011, at the time of the inspection, Respondent was not in compliance with all of the conditions for the "satellite accumulation" of hazardous waste pursuant to 40 C.F.R. § 262.34(c) or for the temporary accumulation of hazardous waste by a generator pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, and therefore did not qualify for the exemption from the permitting/interim status requirements provided by such sections. Specifically, Respondent failed to qualify for the exemptions in 40 C.F.R. § 262.34(a) and (c) in the following ways:

a. By storing hazardous waste more than 90 days, specifically a hazardous waste container of a D001 waste (characteristic of ignitability) was stored on-site from December 7, 2010 to April 4, 2011 (118 days) and another hazardous waste container of a D001 (characteristic of ignitability) waste was stored on-site from December 8, 2009 to March 24, 2010 (104 days), Respondent failed to satisfy the exemption condition set forth in 40 C.F.R.§ 262.34(a);

b. By failing to clearly mark each container of hazardous waste in a manner which is visible upon inspection with the date upon which each period of accumulation began, specifically 30 drums of a D001 (characteristic of ignitability) hazardous waste (some drums may have also been F003 and F005, which are EPA listed hazardous waste solvents) in Respondent's warehouse at the Facility could not be accessed during EPA's inspection and 5 drums of D001 (characteristic of ignitability) hazardous waste (including 4 drums that were also F003 and F005, which are EPA listed hazardous waste solvents) in such warehouse had either no accumulation start date or an illegible accumulation start date, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R.§ 262.34(a)(2);

c. By accumulating hazardous waste in a satellite area that was not under the control of the operator of the process generating the waste, specifically D001 (characteristic of ignitability) hazardous waste from the titration machine in the analytical lab was carried to a container in another room to accumulate before moving the hazardous waste to the less than 90 day storage area, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(c);

d. By failing to mark satellite accumulation containers with either the words "Hazardous Waste" or with other words that identify the contents of the

containers, specifically a container holding D001 (characteristic of ignitability) hazardous waste in one of the labs utilized for product development and two plastic containers holding D001 (characteristic of ignitability) hazardous waste in the production lab, Respondent failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(c),

29. The Facility was, at all times relevant to the violations alleged in this CA, a hazardous waste treatment, storage or disposal "facility," as the term is defined by 25 Pa. Code § 260a.10, with respect to the activities and units described herein.

30. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the Facility.

31. From at least March 9, 2010 through March 24, 2010 and March 8, 2011 through April 4, 2011, Respondent stored hazardous waste at the Facility without a permit, interim status or valid exemption, in violation of 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

COUNT II
(Failure to make a hazardous waste determination)

32. The allegations of Paragraphs 1 through 31 of this CA are incorporated herein by reference.

33. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference into 25 Pa. Code § 262a.10, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is hazardous using the following method:

    a. The person should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4;

    b. The person must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261;

    c. If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:

        i. Testing the waste, or

        ii. Applying knowledge of the hazardous characteristic of the waste.

34. At all times relevant to the violations alleged herein, Respondent generated spent aerosol cans that had contained and may have continued to contain paints, lubricants, cleaners and disinfectants (EPA Hazardous Waste Nos. D001 and D003, which are the characteristics of ignitability and reactivity).

35. At all times relevant to the violations alleged herein, the spent aerosol cans referred to in Paragraph 34, above, were "solid waste" as this term is defined in 40 C.F.R. § 261.2, which is incorporated by reference into 25 Pa. Code § 261a.1.

36. At the time of the inspection, Respondent failed to determine whether its spent aerosol cans referred to in Paragraph 34, above, were hazardous wastes by applying knowledge of the hazardous characteristics of the waste or by testing the waste pursuant to 40 C.F.R. § 262.11 which is incorporated by reference into 25 Pa. Code § 262a.10.

37. At the time of the inspection, Respondent failed to perform a hazardous waste determination of its spent aerosol cans at its Facility in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11.

COUNT III
(Failure to obtain required certification of tank system)

38. The allegations of Paragraphs 1 through 37 of this CA are incorporated herein by reference.

39. 25 PA Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.192(a), provides, in relevant part and with exceptions not herein applicable, that "[o]wners or operators of new tank systems or components must obtain. . . a written assessment reviewed **and certified** by a qualified Professional Engineer, in accordance with [40 C.F.R.] § 270.11(d) . . . , attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste" [emphasis added].

40. At the time of the inspection, Respondent had not obtained a written structural integrity assessment that had been **certified** by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d) for Respondent's new tank system (completed in 2008) at the Facility which stores D001 (characteristic of ignitability) hazardous waste.

41. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.192(a), by failing to obtain a certification by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d) for its new tank system at the Facility.

COUNT IV
(Failure to maintain proper records)

42. The allegations of Paragraphs 1 through 41 of this CA are incorporated herein by reference.

43. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), requires, *inter alia*, that the owner or operator maintain documents and records of the name of each employee filling hazardous waste management positions and a written job description for each hazardous waste management position that includes the requisite skill, education, or other qualifications as well as the duties assigned to that position.

44. At the time of the inspection, Respondent did not have documents and records identifying by name each employee involved in hazardous waste management and the written job descriptions did not detail all of the hazardous waste management duties assigned to each position in accordance with 40 C.F.R. § 264.16(d).

45. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), by failing to maintain documents and records naming each employee involved in hazardous waste management along with proper descriptions of the required qualifications and duties assigned to each hazardous waste management position.

COUNT V
(Failure to comply with air emission standards equipment marking requirements)

46. The allegations of Paragraphs 1 through 45 of this CA are incorporated herein by reference.

47. 25 PA Code Section 264a.1. incorporates by reference the "Applicability" requirements of 40 C.F.R. § 264.1050, which include the following provisions:

    a. 40 C.F.R. § 264.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 264, Subpart BB, "apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes";

    b. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 264, Subpart BB, "applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in . . . (1) [a] unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) [a] unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is

not a recycling unit under the provisions of 40 CFR 261.6."; and

c. 40 C.F.R. § 264.1050(d) provides that "[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment."

48. 25 PA Code Section 264a.1, incorporates by reference the "Definitions" of 40 C.F.R. § 264.1051, which provide, in relevant part, that: "[a]s used in this [40 C.F.R. Part 264] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .", which defines the term "*equipment*" to mean and include "each valve, pump, . . . or flange or other connector . . . ."

49. At the time of EPA's inspection, and for at least 179 days after such inspection, Respondent had liquid hazardous waste with an organic concentration of at least 10 percent by weight flowing through connectors, valves and a pump into a hazardous waste unit, more specifically a hazardous waste tank. The hazardous waste tank and the associated equipment that comprise the tank system are subject to the permitting requirements of 40 C.F.R. Part 270 because Respondent failed to comply with the conditions set forth in Paragraph 27, above, for the accumulation of hazardous waste which are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10.

50. At the time of EPA's inspection, and for at least 179 days after such inspection, the *equipment* (*i.e.*, the pump, valves, and connectors) associated with Respondent's hazardous waste tank system at the Facility was not marked in such a manner that it could be distinguished readily from other pieces of equipment.

51. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1050(d), by failing to mark *equipment* (*i.e.*, the pump, valves, and connectors associated with the hazardous waste tank system) that was subject to the air emission standards for equipment leaks of 40 C.F.R. Part 264, Subpart BB, in a manner by which they could be distinguished readily from other pieces of equipment.

COUNT VI
(Failure to comply with monitoring requirements for pumps)

52. The allegations of Paragraphs 1 through 51 of this CA are incorporated herein by reference.

53. 25 Pa. Code § 264a.1 incorporates by reference the "Standards: Pumps in light liquid service" of 40 C.F.R. Part 264, Subpart BB, set forth at 40 C.F.R. § 264.1052 and provide, in pertinent part, as follows:

a. 40 C.F.R. § 264.1052(a)(1) provides, with exceptions and exclusions (including

those of 40 C.F.R. § 264.1050(e), (f) and (g) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that "[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b) . . .".

b. 40 C.F.R. § 264.1052(a)(2) provides that "[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal."

54. 25 Pa. Code § 264a.1 incorporates by reference the "Test methods and procedures" of 40 C.F.R. Part 264, Subpart BB, set forth at 40 C.F.R. § 264.1063 and, provide, in pertinent part, as follows:

a. 40 C.F.R. § 264.1063(b)(1) provides that "[l]eak detection monitoring, as required in [40 C.F.R.] §§ 264.1052 – 264.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60."

b. 40 C.F.R. § 264.1063(d)(1) through (3) provides that "[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 . . . ; (2) Method 9060A . . . SW-846 . . .; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required] [d]ocumentation of a waste determination [made] by knowledge. . . ."

55. From the time of EPA's inspection, and for at least 179 days after such inspection, Respondent's hazardous waste tank system at the Facility included a pump *in light liquid service*, within the meaning and definition of 40 C.F.R. § 264.1051, as incorporated by referenced in 25 Pa. Code § 264a.1, which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in 25 Pa. Code § 264a.1.

56. From the time of EPA's inspection and for at least 179 days after the inspection, the pump associated with Respondent's hazardous waste tank system was neither "monitored monthly to detect leaks" pursuant to the methods specified in 40 C.F.R. § 264.1063, in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(1), nor "checked by visual inspection each calendar week for indications of liquid dripping from the pump seal" in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(2).

57. Respondents violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1052(a)(1) and (2), by failing to monitor the pump associated with Respondent's hazardous waste tank system at the Facility monthly, by the methods specified in 40 C.F.R. § 264.1063, to detect leaks and to check this pump by visual inspection each calendar week for indications of liquid dripping from the pump seal.

COUNT VII
(Failure to comply with air emission standards for valves)

58. The allegations of Paragraphs 1 through 57 of this CA are incorporated herein by reference.

59. 25 Pa. Code § 264a.1 incorporates by reference the "Standards: Valves in gas/vapor service or in light liquid service" of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1057 and provide, in pertinent part, as follows:

    a. 40 C.F.R. § 264.1057(a) provides, in relevant part, with exceptions not herein applicable, that "[e]ach valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b). . ."

60. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.1061(a), which provides that "an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of valves to leak", as described further in 40 C.F.R. § 264.1061(b) and (c);

61. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.1062(a), which provides that an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3).

62. From the time of EPA's inspection and for at least 179 days after such inspection, each of the valves *in light liquid service* associated with Respondent's hazardous waste tank system at the Facility were not monitored monthly to detect leaks in accordance with: the methods specified in 40 C.F.R. § 264.1063(b), as required pursuant to 40 C.F.R. § 264.1057(a); one of the alternative standards described in 40 C.F.R. § 264.1061(b) and (c), as required pursuant to 40 C.F.R. § 264.1061(a); or one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3), as required pursuant to 40 C.F.R. § 264.1062(a).

63. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.1057(a), 264.1061(b) and (c), and 264.1062(a), by failing to comply with any of the standards therein, for the *valves in light liquid service* associated with Respondent's hazardous waste tank system at the Facility.

IV. SETTLEMENT

64. In full and final settlement and resolution of EPA's claims for the violations alleged in this CA, Respondent agrees to: (1) the assessment of a civil penalty in the amount of **THIRTY SIX THOUSAND, FOUR HUNDRED AND FIFTY FIVE DOLLARS ($36,455.00),** which Respondent agrees to pay in accordance with the terms set forth below; and (2) perform the Supplemental Environmental Project set forth below.

65. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3).

V. PAYMENT TERMS

66. The civil penalty amount assessed in Paragraph 64, above, shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

67. Respondent shall pay the civil penalty amount assessed in Paragraph 64, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 68, 69, 70, and 71, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

    a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2012-0210;

    b. All checks shall be made payable to "**United States Treasury**";

    c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 680107027 Environmental Protection Agency

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option:

https://www.pay.gov/paygov/

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

T. Chris Minshall
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

68. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

69. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is

paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

70. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

71. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt by required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

72. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

73. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's *Supplemental Environmental Projects Policy*, effective May 1, 1998.

74. Respondent agrees to install and operate a thermal oxidizer as part of its existing air pollution control system at the Facility that is designed to achieve a ninety nine percent (99%) destruction efficiency and shall operate it according to the manufacturer's specifications and operating manual as a SEP.

    a. Respondent shall timely identify, apply for, and obtain all required federal, state, and local permits necessary for performing the SEP, including without limitation, permits for construction, installation, and operation of pollution control equipment.

    b. Respondent shall install and begin operation of the thermal oxidizer within one year of the effective date of this CAFO and continue to operate such thermal oxidizer for at least one calendar year in accordance with its approved state air permit.

    c. Respondent shall perform a stack test to demonstrate that the thermal oxidizer is achieving ninety-nine percent (99%) destruction efficiency.

d. This SEP will reduce emissions of volatile organic compounds and hazardous air pollutants, thus reducing risks to the public and environment associated with exposure to volatile organic compounds and hazardous air pollutants.

75. Respondent's total expenditure for installation of this SEP shall not be less than **THREE HUNDRED AND FIVE THOUSAND DOLLARS ($305,000.00)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 79, below.

76. Respondent hereby certifies that, as of the date of this CA, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop this SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

77. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

78. Respondent shall notify EPA, c/o Ken Cox, US EPA Region III, 1650 Arch Street (Mail Code 3LC70), Philadelphia, PA 19103, cox.ken@epa.gov, when installation of the thermal oxidizer is complete. EPA may grant Respondent an extension of time to fulfill this SEP obligation if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the installation of the thermal oxidizer within the time frame required by Paragraph 74(b), above. Requests for any extension must be made in writing within forty eight (48) hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the installation of the thermal oxidizer within the required time frame ("force majeure event"), and prior to the expiration of the installation deadline. Any such requests should be directed to Ken Cox at the address noted above.

79. Respondent shall submit a SEP Completion Report to EPA for the SEP, c/o Ken Cox, US EPA Region III, 1650 Arch Street (Mail Code 3LC70), Philadelphia, PA 19103, cox.ken@epa.gov, within fourteen (14) days of operating the thermal oxidizer for a full calendar year. The SEP Completion Report shall contain the following information:

    a. Respondent's certification that the thermal oxidizer has been installed correctly and is operating properly;

    b. A description of any installation or operation problems encountered and the solution thereto;

    c. Itemized costs;

i. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.

ii. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such.

iii. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.

d. Respondent shall, by its representative officers, sign the report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

e. Respondent agrees that failure to submit the report required by this Paragraph shall be deemed a violation of this CAFO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 83 through 85, below.

80. Respondent agrees that EPA may inspect the facility at which this SEP is being implemented at reasonable times in order to confirm that this SEP is being undertaken in conformity with the requirements of this CAFO.

81. Upon receipt of the SEP Completion Report identified in Paragraph 79, above, EPA will provide written notification to the Respondent of one of the following:

a. If the SEP Completion Report is deficient, notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;

b. If the SEP Completion Report demonstrates that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the project has been completed in accordance with this CAFO; or

c. If the SEP Completion Report demonstrates that the SEP has not been completed in accordance with this CAFO, notify the Respondent in writing that EPA has concluded that the project has not been completed in accordance with this CAFO and seek stipulated penalties in accordance with Paragraphs 83 through 85, below.

82. If EPA provides notification in accordance with Paragraph 81(a), above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) calendar day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of its decision on the adequacy of the installation or operation of the SEP, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 83 through 85, below.

VII. STIPULATED PENALTIES

83. In the event that Respondent fails to comply with any of the terms or conditions of this CA relating to the performance of the SEP, described in Paragraph 74, above, submission of the SEP Completion Report, described in Paragraph 79, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 75, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (c) below, if the SEP has not been installed and operated satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of **ONE HUNDRED AND THIRTY SIX THOUSAND, SEVEN HUNDRED AND SIX DOLLARS ($136,706.00)**;

b. If the SEP is not completed in accordance with Paragraph 74, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to install and operate the project; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

c. If the SEP is installed and operated in accordance with Paragraph 74, above, and the SEP Completion Report is submitted in accordance with Paragraph 79, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of **TWENTY SEVEN THOUSAND, THREE HUNDRED AND FORTY ONE DOLLARS ($27,341.00)**;

d. If the SEP is completed in accordance with Paragraph 74, above, the SEP Completion Report is submitted in accordance with Paragraph 79, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty; and

e. If Respondent fails to submit the SEP Completion Report required by Paragraph 79, above, Respondent shall pay a stipulated penalty in the amount of $500.00 for each day after the report was originally due until the report is submitted.

84. The determination of whether the SEP has been satisfactorily installed and operated and whether the Respondent has made a good faith, timely effort to install and operate the SEP shall be in the sole discretion of EPA.

85. Respondent shall pay stipulated penalties, in accordance with Paragraph 83, above, not more than fourteen (14) calendar days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 67 through 71, above.

VIII. CERTIFICATIONS

86. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the current, authorized revised PaHWR and RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

IX. OTHER APPLICABLE LAWS

87. Nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

X. RESERVATION OF RIGHTS

88. This CAFO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in § 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO.

XI. FULL AND FINAL SATISFACTION

89. This settlement shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations set forth in the CAFO.

XII. PARTIES BOUND

90. This CAFO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CAFO.

XIII. EFFECTIVE DATE

91. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

XIV. ENTIRE AGREEMENT

92. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For the Respondent:

Bimax, Inc.

Date: 8-14-2012

By: Ronald W. Kreis
Ronald W. Kreis, Ph.D
President

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 8/16/2012

By: T. Chris Minshall
T. Chris Minshall
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 8/21/12

By: Abraham Ferdas
Abraham Ferdas
Director
Land and Chemicals Division

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Bimax, Inc.	:	**Docket No. RCRA-03-2012-0210**
158 Industrial Road	:	
Glen Rock, PA 17327	:	
	:	**FINAL ORDER**
Respondent	:	
	:	
Bimax, Inc.	:	**Proceeding under Sections 3008(a) and**
158 Industrial Road	:	**(g) of the Resource Conservation and**
Glen Rock, PA 17327	:	**Recovery Act, *as amended*,**
	:	**42 U.S.C. § 6928(a) and (g).**
Facility	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Bimax, Inc., have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the penalty agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of **THIRTY SIX THOUSAND, FOUR HUNDRED AND FIFTY FIVE DOLLARS ($36,455.00),** as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 8/23/12

By: Renée Sarajian
Renée Sarajian
Regional Judicial Officer

In the Matter of Bimax, Inc.

Docket No. RCRA-03-2012-0210

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of August 2012, I sent a copy of the foregoing CONSENT AGREEMENT and FINAL ORDER by U.S. Mail, to the following person:

Ronald W. Kreis, Ph.D
President
Bimax, Inc.
158 Industrial Road
Glen Rock, PA 17327

T. Chris Minshall
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III