

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

In Re:

**Penn-Union Corporation
229 Waterford St.
Edinboro, PA 16412**

RESPONDENT

**229 Waterford St.
Edinboro, PA 16412**

FACILITY

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Docket No. RCRA-03-2011-0187

CONSENT AGREEMENT

Proceeding under 3008(a) and (g) of the
Resource Conservation and Recovery
Act, *as amended*, 42 U.S.C. § 6928(a) and (g)

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I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Penn-Union Corporation ("Penn-Union" or "Respondent"), pursuant to 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. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO," hereinafter jointly referred to as the "CA/FO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 229 Waterford Street, Edinboro, PA 16412 (the "Facility").

2. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by the U.S. Environmental Protection Agency ("EPA" or the "Agency") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on three separate occasions (September 26, 2000, January 20, 2004 and April 29, 2009). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004 and June 29, 2009, respectively. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters

260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

3. 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 incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWR authorization. Neither the 2004 nor the 2009 authorization make any changes to the November 27, 2000 PaHWR that are relevant to the violations set forth herein.
4. This CA is entered into by Complainant and Respondent to address the violations alleged in the Findings of Fact, as set forth below.
5. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA, as set forth in this CA/FO.
6. For the purposes of this proceeding only, Respondent neither admits nor denies the Findings of Fact contained in this CA, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent neither admits nor denies the Conclusions of Law contained in this CA, except as provided in Paragraph 5, above.
8. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations herein or to appeal the FO attached hereto.
9. The settlement agreed to by the parties in this CA reflects the desire of the parties to resolve this matter without litigation.
10. Respondent consents to the issuance of this CA and to the attached FO and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
11. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

12. On February 4, 2011 EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), 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. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 6 and 7, above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 9, above.
14. 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), and 25 Pa. Code § 260a.10.
15. Respondent is, and was at the time of the violations alleged herein, the "owner" and "operator" of a "facility" located at 229 Waterford Street, Edinboro, PA 16412 (the "Facility"), as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, and, with respect to the term "facility", as defined in 25 Pa. Code § 260a.10.
16. On September 8, 2010, representatives from EPA conducted a Compliance Evaluation Inspection (the "Inspection") of the Facility. At the time of the Inspection, and at all times relevant to the violations alleged in this CA/FO, Respondent was a "small quantity generator" of greater than 100 kg but less than 1000kg of "hazardous waste" at the Facility described herein as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1. The Facility's RCRA ID No. is PAD041398348.
17. At the time of the Inspection, Respondent was engaged in the "storage" of "hazardous waste" in "containers" at the Facility as described herein, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1 and/or as defined in 25 Pa. Code § 260a.10.

COUNT I

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

18. The allegations of Paragraphs 1 through 17 of this Consent Agreement are incorporated herein by reference.
19. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
20. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than one-hundred and eighty (180) days are exempt from the requirement to obtain a permit for such accumulation, as long as the hazardous waste is stored in accordance with a number of

conditions set forth in that section, including the requirements of 40 C.F.R. § 262.34 (a) (2), which requires that the date upon which each period of accumulation of hazardous waste begins is clearly marked and visible for inspection on each container.

21. At the time of the Inspection, Respondent engaged in the storage of hazardous waste generated at the Facility in two containers which were not labeled with the date on which the accumulation of hazardous waste in such containers began.
22. At the time of the Inspection, Respondent failed to qualify for the "less than 180 day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), for the activities described in Paragraph 21, above, by failing to satisfy the conditions for such exemption as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d).
23. Respondent's Facility is a hazardous waste treatment, storage or disposal "facility", as that term is defined by 25 Pa. Code § 260a.10, with respect to the activities described in Paragraphs 21-22, above.
24. Respondent has never had a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of hazardous waste at the Facility.
25. 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 activities described in Paragraphs 21 through 23, above.
26. Respondent violated 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), by storing hazardous waste in containers at the Facility without a permit, interim status or valid exemption.

COUNT II

(Failure to Properly Manage Universal Waste)

27. The allegations of Paragraphs 1 through 26 of this CA/FO are incorporated herein by reference as though fully set forth at length.
28. 25 Pa. Code § 266b.1, incorporating 40 C.F.R. § 273.13(d)(1), requires, among other things, that a small quantity handler of universal hazardous waste, specifically, universal waste "lamps", contain such lamps in structurally-sound containers or packages that remain closed and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. 25 Pa. Code § 266b.1, incorporating 40 C.F.R. § 273.14(e), requires that each lamp, or container or package containing such lamps, must

be clearly marked or labeled with one of the following phrases: "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

29. At the time of the September 8, 2010 Inspection, Respondent was a "small quantity handler of universal waste" as that term is defined at 40 C.F.R. § 273.9, and was storing universal waste lamps at the Facility in cardboard containers. These containers were not labeled with the phrases "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."
30. On September 8, 2010, Respondent failed to store universal waste lamps in containers with proper labels, in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e).

COUNT III

(Failure to keep a copy of each manifest for off-site shipments of hazardous waste for three years)

31. The allegations of Paragraphs 1 through 30 of this CA/FO are incorporated herein by reference.
32. 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. §§ 262.40(a), requires a generator of hazardous waste to keep a copy of each manifest for off-site shipments of hazardous waste for three years, or until the generator receives a copy of the manifest that has been signed by the designated facility that received the waste, after which the generator must retain the signed copy received from the designated facility for at least three years from the date the waste was accepted by the initial transporter.
33. On June 30, 2009, Respondent shipped off-site hazardous waste generated at the Facility under Manifest No. 001029019SKS, signed in accordance with 40 C.F.R. § 262.23(a).
34. At the time of the September 8, 2010 inspection the Respondent was not maintaining at the Facility a copy of the Manifest No. 001029019SKS which had been signed by the designated facility and returned to the Respondent.
35. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a), by failing to maintain as a record a copy of a manifest, signed and returned by the designated facility, for at least three years from the date of acceptance of the hazardous waste shipped under such manifest by the designated facility.

III. CIVIL PENALTIES

36. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA/FO, Respondent consents to the assessment of a civil penalty in the amount of **\$14,957.00**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CA/FO, 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 CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.

37. 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. Section 6928(a)(3).

38. Respondent shall remit payment for the civil penalty set forth in Paragraph 36, above, by certified check or cashier's check, or by electronic funds 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-03-2011-0187;

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 and mailed to:

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

Contact: 513-487-2105 or 513-487-2091

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

U.S. Bank
Government Lockbox 979077
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 with no USA branches shall be addressed to:

Cincinnati Finance

U.S. EPA, MS-NWD
26 W.M.L. King Drive
Cincinnati, OH 45268-0000

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

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"

- G. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA=051036706
Account No.: 310006, U.S. Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical Location of U.S. Treasury Facility
5700 Rivertech Court
Rivertech, Maryland 20737

Contact: 202-874-7026 or 1-866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV

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

Additional payment guidance is available at:

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

- I. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

39. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CA/FO.
40. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 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 or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
41. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a true and correct copy of this CA/FO 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. Section 13.11(a).
42. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. Section 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.
43. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R.

Section 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. CERTIFICATION OF COMPLIANCE

44. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this CA/FO, is in compliance with the provisions of RCRA, Subtitle C, 42 U.S.C. §§ 6901 *et seq.*, and the Commonwealth of Pennsylvania's federally authorized hazardous waste program set forth at 25 Pa. Code §§ 260a.1 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle C of RCRA.

V. OTHER APPLICABLE LAWS

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

VI. RESERVATION OF RIGHTS

46. This CA/FO 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 Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO.

VII. FULL AND FINAL SATISFACTION

47. The settlement set forth in this CA/FO shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations set forth in the CA/FO.

VIII. PARTIES BOUND

48. This CA/FO 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 CA/FO.

IX. EFFECTIVE DATE

49. The effective date of this CA/FO 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.


X. ENTIRE AGREEMENT

50. This CA/FO 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 CA/FO.

For the Respondent:

Penn-Union Corporation

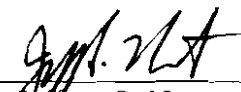
Date: 7-12-11

By: 
Brian P. Cullen, President
Penn-Union Corporation

For the Complainant:

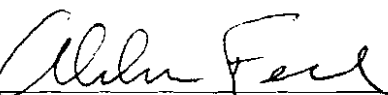
U.S. Environmental Protection Agency, Region III

Date: 7/22/11

By: 
Jeffrey S. Nast
Sr. 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: 7/26/11

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

In Re:

Penn-Union Corporation
229 Waterford St.
Edinboro, PA 16412

RESPONDENT

229 Waterford St.
Edinboro, PA 16412

FACILITY

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Docket No. RCRA-03-2011-0187

FINAL ORDER

FINAL ORDER

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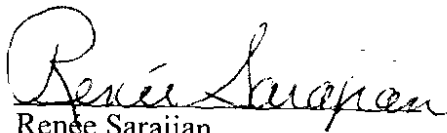
Complainant, the Associate Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, **Penn-Union Corporation**, have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules 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. Sections 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 civil penalty amount 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 FOURTEEN THOUSAND NINE-HUNDRED FIFTY-SEVEN DOLLARS (**\$14,957.00**) 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: 8/8/11

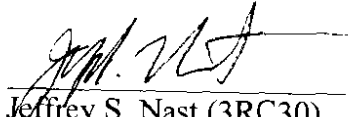
BY: 
Renee Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. RCRA-03-2011-0187, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via UPS expedited delivery to:

Brian P. Cullen, President
Penn-Union Corp.
229 Watford Street
Edinboro, PA 16412

8/9/11
Date


Jeffrey S. Nast (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA , Region III
(215) 814-2652