

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Stabilit America, Inc.  
285 Industrial Drive  
Moscow, Tennessee 38057  
EPA ID No.: TNR000012302

Respondent.

Docket No. RCRA-04-2020-2100(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is Stabilit America, Inc., a corporation doing business in the State of Tennessee. This proceeding pertains to Respondent's facility located at 285 Industrial Drive Moscow, Tennessee 38057 (Facility).

### III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Tennessee (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found Tenn. Code Ann. § 68-212-101 et seq. and Tenn. Comp. R. & Regs. 0400-12-01.01 through 0400-12-01.12.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Tenn. Code Ann. § 68-212-107(d) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)] requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at Tenn. Comp. R. & Regs. 0400-12-01-.03 [40 C.F.R. Part 262].
12. Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Tenn. Comp. R. & Regs. 0400-12-01-.06 (permitted) and Tenn. Comp. R. & Regs. 0400-12-01-.05 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(d)2 [40 C.F.R. § 261.4(b)].
15. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(I) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of

the characteristics identified Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(b)-(e) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.

16. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (b) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (b) [40 C.F.R. §§ 261.20 and 261.23], a solid waste that exhibits the characteristic of reactivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D003.
18. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(II) and Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(a) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed "hazardous waste" if it is listed Tenn. Comp. R. & Regs. 0400-12-01-.02(4) [40 C.F.R. Part 261, Subpart D].
19. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31].
20. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31(a)], spent solvents from non-specific sources which are listed for ignitability are F003 hazardous wastes.
21. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a "generator" is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Tenn. Comp. R. & Regs. 0400-12-01-.02 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
22. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a "facility" includes "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste."
23. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a "person" includes a corporation.
24. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], an "owner" is "the person who owns a facility or part of a facility" and an "operator" is "the person responsible for the overall operation of a facility."
25. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], "storage" means the containment of hazardous waste in such a manner as not to constitute disposal.
26. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], "treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous, safer to transport, store, or dispose of, or amenable for recovery, amenable for storage, or reduced in volume.

27. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2. [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms (2200 lbs) or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)-(v) [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).
28. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11].
29. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)(I) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)(1) [40 C.F.R. § 265.173(a)], and is a condition of the LQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
30. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)(I) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(e) [40 C.F.R. § 265.174] and Tenn. Comp. R. & Regs. 0400-12-01-.05(2)(f)4. [40 C.F.R. § 265.15(d)], and is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors, and, inter alia, record inspections in an inspection log or summary that includes the date and time of the inspection.
31. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)(I) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(29)(h)(2)(ii) [40 C.F.R. § 265.1087(b)(2)], and is a condition of the LQG Permit Exemption, when a container having a design capacity greater than 0.1 m<sup>3</sup> is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator must control air pollutant emissions from the containers in accordance with the Container Level 3 standards specified in Tenn. Comp. R. & Regs. 0400-12-01-.05(29)(h)(5) [40 C.F.R. § 265.1087(e)] at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere. Tenn. Comp. R. & Regs. 0400-12-01-.05(29)(h)(5) [40 C.F.R. § 265.1087(e)] requires the owner or operator to perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” initially when the enclosure is first installed and, thereafter, annually. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.05(29) [40 C.F.R. 265, Subpart CC], the air emission standards for containers apply to owners and operators of all facilities that treat, store or dispose of hazardous waste in containers unless, inter alia, the owner or operator certifies that the hazardous waste management unit is equipped with and operating air emission controls in accordance with the applicable requirements of the Clean Air Act.
32. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iv) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.10(1)(g)(1)(v)(I) [40 C.F.R. § 268.7(a)(5)(i)], and is a condition of the LQG Permit Exemption, a generator must develop and follow a waste analysis plan which is based on a detailed chemical and physical analysis of a

representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this rule, including the selected testing frequency.

33. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)3 [40 C.F.R. § 262.34(b) (2016)], an LQG who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Tenn. Comp. R. & Regs. 0400-12-01-.06 and .05 [40 C.F.R. Parts 264 and 265] and the permit requirements of Tenn. Comp. R. & Regs. 0400-12-01-.07 [40 C.F.R. Part 270].
34. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(5)(a)1. [40 C.F.R. § 262.40(a)], a generator must keep a copy of each manifest signed in accordance with Tenn. Comp. R. & Regs. 0400-12-01-.03(3)(d)1 [40 C.F.R. § 262.23(a)] of this rule for three years or until it receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
35. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.11(3)(c)3.(i) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

#### IV. FINDINGS OF FACTS

36. Respondent owns and operates a facility that manufactures and distributes fiberglass-reinforced panels. The facility is located at 285 Industrial Drive in Moscow, Tennessee.
37. Respondent, through its operations, generates spent solvent which is managed as D001 / F003 hazardous waste, waste resins which are managed as D001 / D003 hazardous waste, and contaminated styrene which is managed as D001 hazardous waste, used oil, and universal waste.
38. On August 13, 2001, Respondent notified the Tennessee Department of Environmental Compliance (TDEC) as an LQG by filing a state generator notification form. Since 2001, Respondent has generated 1,000 kilograms or more of hazardous waste in a calendar month and is therefore an LQG of hazardous waste.
39. On March 28, 2019, the EPA and TDEC conducted a compliance evaluation inspection (CEI) at Respondent's Facility. The EPA's findings of the CEI were documented in a show cause letter and CEI report mailed June 6, 2019.
40. At the time of the CEI, the EPA inspector observed that Respondent generates hazardous waste at the Facility, including hazardous waste with the following EPA Hazardous Waste Numbers: D001 and D003.
41. At the time of the CEI, the EPA inspector observed solid waste accumulating in the secondary containment pallet located underneath a hazardous waste container in the 90-day hazardous waste container storage area. Respondent had not conducted a hazardous waste determination on the solid waste.
42. At the time of the CEI, the EPA inspector observed two open containers of D001 hazardous waste in the 90-day hazardous waste container storage area.

43. At the time of the CEI, the EPA inspector reviewed hazardous waste container storage area inspection records and observed that Respondent failed to demonstrate that it conducted an inspection of the 90-day hazardous waste container storage area for the week of December 25, 2017. The EPA inspector also observed that Respondent failed to demonstrate that it conducted any inspections of the Mix Room area, where the EPA inspector observed Respondent storing and treating three 55-gallon containers of D001/D003 hazardous waste. Additionally, the EPA inspector observed that Respondent had failed to document the time of the inspection on records from March 2018 until March 2019.
44. At the time of the CEI, the EPA inspector observed Respondent was storing and treating D001 / D003 hazardous waste in containers having a design capacity greater than 0.1 m<sup>3</sup> in the Mix Room and the Hot Box enclosure areas. During the onsite records review, Respondent failed to demonstrate that it had performed initial or annual Procedure T verification procedures for the Mix Room and Hot Box enclosure areas or that it otherwise certified to the EPA that its hazardous waste management units were equipped with and operating air emission controls in accordance with the applicable requirements of the Clean Air Act.
45. At the time of the CEI, the EPA inspector reviewed Respondent's waste analysis plan, and observed that the plan did not contain all information necessary to treat the D001/ D003 hazardous waste resin generated at the Facility.
46. At the time of the CEI, the EPA inspector reviewed hazardous waste container storage area inspection records and observed that Respondent had documentation indicating that one container of hazardous waste had been stored at the Facility for at least 101 days.
47. At the time of the CEI, the EPA inspector reviewed hazardous waste manifest records and observed that Respondent failed to maintain a signed copy of manifest number 009412213FLE.
48. At the time of the CEI, the EPA inspector observed that Respondent failed to label a container storing used oil with the words "Used Oil".

## **V. ALLEGED VIOLATIONS**

49. Respondent is a "person" as defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
50. Respondent is an "owner" and "operator" of a "facility" located at 285 Industrial Drive, Moscow, Tennessee, as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
51. Respondent is a "generator" of "solid wastes" and "hazardous wastes" as defined in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b-c) [40 C.F.R. § 261.(2)-(3)].
52. Respondent failed to conduct a hazardous waste determination on the solid waste generated in the secondary containment pan located in the 90-day hazardous waste container storage area. The EPA therefore alleges Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11].

53. Respondent failed to close two containers of D001 hazardous waste in the hazardous waste container storage area. The EPA therefore alleges Respondent violated Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the closed container requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)(1) [40 C.F.R. § 265.173(a)].
54. Respondent failed to conduct an inspection of the 90-day hazardous waste container storage area for the week of December 25, 2017, failed to conduct any inspections of the hazardous waste containers in the Mix Room area, and failed to document the time of the inspection on records from March 2018 until March 2019. The EPA therefore alleges Respondent violated Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by failing to conduct and document inspections as required by Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(e) [40 C.F.R. § 265.174] and Tenn. Comp. R. & Regs. 0400-12-01-.05(2)(f)4. [40 C.F.R. § 265.15(d)].
55. Respondent failed to comply with container level 3 Subpart CC requirements, which included the initial or annual Procedure T verification, for the Hot Box, and did not certify that the Hot Box was equipped with and operating air emission controls in accordance with the Clean Air Act. The EPA therefore alleges Respondent violated Tenn. Code Ann. §68-212-108 [Section 3005 of RCRA, 42 U.S.C. §6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by failing to comply with Tenn. Comp. R. & Regs. 0400-12-01-.05(29)(a) [40 C.F.R. 265.1080].
56. Respondent's waste analysis plan failed to include all information necessary to treat the D001 hazardous waste generated at the Facility. The EPA therefore alleges Respondent violated Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by failing to include necessary information in the waste analysis plan as required by Tenn. Comp. R. & Regs. 0400-12-01-.10(1)(g)(1)(v)(I) [40 C.F.R. § 268.7(a)(5)(i)].
57. Respondent exceeded the 90-day storage condition by storing waste on site for 101 days without a permit. The EPA therefore alleges Respondent violated Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by storing hazardous waste for longer than 90 days as prohibited by Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)3 [40 C.F.R. § 262.34(b) (2016)].
58. Respondent failed to maintain a signed copy of manifest number 009412213FLE. The EPA therefore alleges Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.03(5)(a)1. [40 C.F.R. § 262.40(a)].
59. Respondent failed to label a container storing used oil with the words "Used Oil". The EPA therefore alleges Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.11(3)(c)3.(i) [40 C.F.R. § 279.22(c)(1)].

## VI. STIPULATIONS

60. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
61. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section V. (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO.
62. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
  - d. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
  - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
  - f. agrees to comply with the terms of this CAFO.
63. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.



64. In accordance with 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following valid email addresses: buso.roberto@epa.gov for the EPA and jorge.benavides@stabilitamerica.com for the Respondent, and the individuals named in the certificate of service are authorized to receive service related to this proceeding.

## VII. TERMS OF PAYMENT

65. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$64,000.00**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

66. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

c. If paying by EFT, Respondent shall transfer the payment to:

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

d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

67. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Alan Newman  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
newman.alan@epa.gov

68. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and "Docket No. RCRA-04-2020-2100(b)."

69. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, EPA may require the Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States

Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).

- b. Non-Payment Penalty. On any portion of the civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

70. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14;
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

71. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

#### **VIII. EFFECT OF CAFO**

72. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

73. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c),

74. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
75. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
76. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
77. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
78. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
79. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
80. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
81. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
82. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
83. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
84. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil

penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

85. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
86. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

#### **IX. EFFECTIVE DATE**

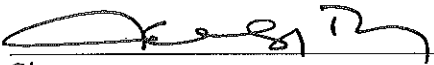
87. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages**

The foregoing Consent Agreement In the Matter of **Stabilit America, Inc., Docket No. RCRA-04-2020-2100(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

  
Signature

4-9-2020  
Date

Printed Name: Jorge Benavides

Title: General Manager

Address: Stabilit America, Inc.  
285 Industrial Drive  
Moscow, TN 38057

The foregoing Consent Agreement In the Matter of **Stabilit America, Inc.**, Docket No. RCRA-04-2020-2100(b), is Hereby Stipulated, Agreed, and Approved for Entry.  
FOR COMPLAINANT:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Alan A. Annicella, Acting Chief  
Chemical Safety and Land Enforcement Branch  
Enforcement & Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Stabilit America, Inc.  
285 Industrial Drive  
Moscow, Tennessee 38057  
EPA ID No.: TNR000012302

Respondent.

Docket No. RCRA-04-2020-2100(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer



## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Stabilit America, Inc., Docket No. RCRA-04-2020-2100(b), were filed and copies of the same were mailed to the parties as indicated below.

### Via Electronic Mail to all Parties:

#### To the Respondent:

Jorge Benavides, General Manager  
Stabilit America, Inc.  
jorge.benavides@stabilitamerica.com

Gary C. Shockley, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
gshockley@bakerdonelson.com

#### To the EPA:

Roberto X. Buso  
Associate Regional Counsel  
Office of Regional Counsel  
buso.roberto@epa.gov

Alan Newman  
Kentucky and Tennessee State Coordinator  
Land, Asbestos and Lead Section  
newman.alan@epa.gov

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960