UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:	)	
	)	
COLORFX, LLC	)	**CONSENT AGREEMENT AND FINAL ORDER**
	)	
RCRA I.D. No. IAD005288188	)	
RCRA I.D. No. IAD984588335	)	Docket No. RCRA-07-2012-0031
	)	
Respondent	)	
	)	
Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928(a) and (g)	)	

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Colorfx, LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that the EPA has reason to believe that Respondent violated 3005 of RCRA, 42 U.S.C. § 6925, and the implementing regulations.

Parties

3. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7.

4. The Respondent is Colorfx, LLC (Respondent), a domestic limited liability company authorized to do business in the State of Iowa.

Statutory and Regulatory Framework

5. When the EPA determines that any person has violated or is in violation of any RCRA requirement, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than $25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to $32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004 and January 12, 2009, and penalties of up to $37,500 per day are authorized for violations that occur after January 12, 2009. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by the EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this CAFO.

7. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

8. The regulations at 40 C.F.R. § 262.34(d), allow a generator who generates between 100 and 1,000 kilograms per month to accumulate hazardous waste in containers on-site for one hundred eighty (180) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. §§ 262.34(d)(1)-(5) are met. These conditions include compliance with various hazardous waste regulatory requirements.

9. The regulations at 40 C.F.R. Part 273, set forth the standards for generators of universal waste.

Factual Background

10. Respondent is a limited liability company authorized to conduct business in the State of Iowa, and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11. Respondent, located at 10776 Aurora Avenue, Urbandale, Iowa, 50322 and at 708 Industrial, Waverly, Iowa, 50677, operates sheet fed off-site printing facilities. Respondent employs approximately 200 full time employees at its Urbandale, Iowa facility and approximately 32 full time employees at its Waverly, Iowa facility.

12. Respondent has been operating as a small quantity generator of hazardous waste at both the Urbandale and Waverly facility. Small quantity generators generate between 100 kilograms (kg) and 1,000 kg of hazardous waste per month.

13. Respondent has been assigned the following EPA ID Numbers: IAD005288188 and IAD984588335.

14. On or about April 14, 2011, an inspector for the EPA conducted an inspection at Respondent's Waverly facility. Respondent was inspected as a small quantity generator of hazardous waste.

15. On or about August 18, 2011, an inspector for the EPA conducted an inspection at Respondent's Urbandale facility. Respondent was inspected as a small quantity generator of hazardous waste.

16. During the inspection, it was documented that Respondent accumulated hazardous waste with the following hazardous waste code at its Waverly facility: D001 characteristic. Respondent is also a used oil generator and a small quantity handler of universal waste, accumulating less than 5,000 kilograms of universal waste at any time.

17. During the inspection, it was documented that Respondent accumulated hazardous waste with the following hazardous waste code at its Urbandale facility: D001 characteristic. Respondent is also a used oil generator and a small quantity handler of universal waste, accumulating less than 5,000 kilograms of universal waste at any time.

18. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261. Each of the wastes listed in Paragraphs 16 and 17 are a "solid waste" and a "hazardous waste" within the meaning of these regulations.

19. Respondent operates a 180 days or less hazardous waste container accumulation area at both the Waverly and Urbandale facilities.

20. Based on information obtained during the April 2011 inspection at the Waverly facility

and the August 2011 inspection at the Urbandale facility, Respondent was issued a Notice of Preliminary Findings for, among other things: failure to provide adequate aisle space for container management and emergency equipment, failure to mark hazardous waste accumulation containers with the words "Hazardous Waste," failure to visibly mark the date of accumulation for inspection on a hazardous waste accumulation container, failure to keep a hazardous waste accumulation container closed, failure to post the name and number of the emergency coordinator next to the telephone, failure to inspect the less-than-180-day container accumulation area weekly, failure to keep satellite accumulation containers closed, failure to identify contents of satellite accumulation containers, treating hazardous waste rags without a RCRA permit, failure to label containers of used batteries with the words "Universal Waste – Battery(ies)" or "Waste Battery(ies)"or "Used Battery(ies)," failure to date or otherwise track universal waste (batteries) to demonstrate length of time of accumulation, failure to label used lamps with the words "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)," and failure to maintain used lamps in a closed, structurally sound container.

21. For purposes of this settlement only, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

Alleged Violations

Count 1
Operation of a Hazardous Waste Facility Without a RCRA Permit or Interim Status

22. Complainant hereby incorporates the allegations contained in Paragraphs 10 through 20 above, as if fully set forth herein.

23. Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(b), requires each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

24. The regulations at 40 C.F.R. § 262.34(d) allow a small quantity generator to accumulate hazardous waste in containers on-site for 180 days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. §§ 262.34(d)(1)-(5) are met. These conditions include compliance with other hazardous waste regulatory requirements.

25. At the time of the April and August 2011 inspections, Respondent was not complying with various hazardous waste regulatory requirements, described below.

26. Respondent does not have a RCRA Permit or Interim Status to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C § 6925.

Failure to Comply with Generator Requirements

27. At the time of the April and August 2011 inspections, Respondent was not complying with the following regulatory requirements:

Failure to provide adequate aisle space for container management and emergency equipment

28. The regulations at 40 C.F.R. § 262.34(d)(4) referencing § 265.35 require that a generator maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

29. At the time of the August 2011 inspection, the inspector observed that one of the 55-gallon containers of waste solvent located in the less-than-180-day container accumulation area was located on a pallet underneath a shelving unit located against a wall, with virgin product stacked next to the container. The inspector was unable to view the entire container; therefore, the inspector concluded that the facility had failed to provide adequate aisle space in the container accumulation area to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to the area in the event of an emergency.

30. Respondent's failure to provide adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to a hazardous waste storage area is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R. § 265.35.

Failure to mark hazardous waste accumulation containers with the words "Hazardous Waste"

31. The regulations at 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(3) require that a generator label hazardous waste accumulation containers with the words "Hazardous Waste."

32. At the time of the April 2011 inspection, the inspector observed one 55-gallon hazardous waste accumulation container holding waste solvent located in the press-room dock and one 55-gallon hazardous waste accumulation container located in the north central area of the building. Neither container was labeled with the words "Hazardous Waste."

33. At the time of the August 2011 inspection, the inspector observed waste solvent in seven 55-gallon containers located on pallets in the less-than-180-day container accumulation area. The inspector observed that although there were "Hazardous Waste" labels lying on top of containers of waste solvent, they were not affixed. Therefore, none of the containers were labeled as "Hazardous Waste."

34. Respondent's failure to properly label hazardous waste accumulation containers with the words "hazardous waste" is a failure to comply with the requirement set forth at 40 C.F.R. §

262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(3).

Failure to mark hazardous date of accumulation visible for inspection on a hazardous waste accumulation container

35. The regulations at 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(2) require that a generator label hazardous waste accumulation containers with the date of accumulation visible for inspection.

36. At the time of the April 2011 inspection, the inspector observed one 55-gallon hazardous waste accumulation container holding waste solvent located in the press-room dock and one 55-gallon hazardous waste accumulation container located in the north central area of the building. Neither container was labeled with an accumulation start date.

37. At the time of the August 2011 inspection, the inspector observed waste solvent in seven 55-gallon containers located on pallets in the less-than-180-day container accumulation area. None of the containers were marked with the accumulation start date.

38. Respondent's failure to label a hazardous waste accumulation containers with the accumulation date visible for inspection is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(2).

Failure to keep a hazardous waste accumulation container closed

39. The regulations at 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R. § 265.173(a) require that a generator keep hazardous waste containers closed during storage.

40. At the time of the April 2011 inspection, the inspector observed one 55-gallon hazardous waste accumulation container holding waste solvent located in the press-room dock and one 55-gallon hazardous waste accumulation container located in the north central area of the building. Neither container was closed.

41. At the time of the August 2011 inspection, the inspector observed waste solvent in seven 55-gallon containers in the less-than-180-day container accumulation area. One container of waste solvent was located inside the flammables cabinet within the container accumulation area. Because the bung hole was open, the inspector determined that the facility failed to keep the container of waste solvent inside the flammables cabinet closed.

42. Respondent's failure to keep hazardous waste containers closed during storage is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R. § 265.173(a).

Failure to post the name and number of the emergency coordinator next to the telephone

43. The regulations found at 40 C.F.R. § 262.34(d)(5)(ii)(A) require hazardous waste generators to post the name and telephone number of the emergency coordinator next to the telephone.

44. At the time of the August 2011 inspection, the inspector observed a list of emergency response teams (for first and second shifts) and a facility layout that documented locations of fire extinguishers posted by several telephones. The facility representative provided copies of several lists of emergency telephone numbers posted throughout the facility, which includes the emergency telephone number for the fire department, but does not identify the emergency coordinator. Therefore, the facility had failed to post the emergency coordinator's telephone number next to a telephone.

45. Respondent's failure to post the name and telephone number of the emergency coordinator next to the telephone is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(5)(ii)(A).

Failure to post the location of fire extinguishers and spill control material, and, if present, fire alarm next to the telephone

46. The regulations at 40 C.F.R. § 262.34(d)(5)(ii)(B) require that a generator post the location of fire extinguishers and spill control material and, if present, a fire alarm, next to the telephone.

47. At the time of the April 2011 inspection, the inspector observed that Respondent had the telephone number of the fire department and emergency coordinator posted by the telephone, but not the other required information including the locations of fire extinguishers and spill control equipment.

48. At the time of the August 2011 inspection, the inspector observed a list of emergency response teams and a facility layout that documents locations of fire extinguishers posted by several telephones. The Emergency Services list did not identify the location of response equipment; therefore, the inspector concluded that the facility had failed to post the location of spill control material next to a telephone.

49. Respondent's failure to post the location of fire extinguishers and spill control material, and, if present, fire alarm next to the telephone is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(5)(ii)(B).

Failure to inspect the less-than-180-day container accumulation area weekly

50. The regulations at 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R § 265.174 require areas where containers are stored to be inspected at least weekly.

51. At the time of the August 2011 inspection, the facility representative stated the container accumulation area is inspected biweekly. The inspector documented that the facility does not maintain logs of the biweekly inspections of the container accumulation area. Another facility representative stated that he inspects the container accumulation area monthly, and has copies of the monthly inspections at his office in Newton, Iowa. The inspector concluded that the facility failed to inspect the container accumulation area weekly.

52. Respondent's failure to inspect the less-than-180-day container accumulation area weekly is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(d)(2) referencing 40 C.F.R. § 265.174.

Failure to keep satellite accumulation containers closed

53. The regulations at 40 C.F.R. § 262.34(c)(1)(i) referencing 40 C.F.R. § 265.173(a) require that containers holding hazardous waste be closed during storage, except when it is necessary to add or remove waste.

54. At the time of the April 2011 inspection, the inspector observed waste rags stored in approximately six satellite containers located throughout the building. According to several facility representatives, rags are placed in open containers with a grate in the bottom to allow liquid to drain from the rags and the liquid is then placed in the 55-gallon containers holding waste solvent for disposal. The inspector determined that the facility failed to store waste rags in closed satellite accumulation containers.

55. At the time of the August 2011 inspection, the inspector observed waste solvent in a 55-gallon container located in the satellite accumulation area. The inspector observed the bung hole of this container was open; therefore the facility failed to keep this satellite accumulation container closed.

56. Respondent's failure to keep satellite accumulation containers closed is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(c)(1)(i) referencing 40 C.F.R. § 265.173(a).

Failure to identify contents of satellite accumulation containers

57. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) require that a generator mark its containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

58. At the time of the April 2011 inspection, the inspector documented that waste rags are stored in approximately six satellite containers located throughout the building. According to several facility representatives, when the waste rags are placed in the satellite containers they are wet enough that liquid can be wrung from the rags. The inspector determined that the facility failed to mark the container with the words "hazardous waste" or other words identifying their contents.

59. At the time of the August 2011 inspection, the inspector observed waste solvent in a 55-gallon container located in the satellite accumulation area, approximately 20 gallons of waste solvent in a 55-gallon container located near the eight color feeder press, and waste solvent in a 55-gallon container that was originally identified as virgin product located near a press. None of the satellite accumulation containers were marked with the words "hazardous waste" or with other words that identified the contents of the containers.

60. Respondent's failure to identify contents of satellite accumulation containers is a failure to comply with the requirement set forth at 40 C.F.R. § 262.34(c)(1)(ii).

Treating hazardous waste rags without a RCRA permit

61. Section 3005 of RCRA, 42 U.S.C. § 6925 states that operation of a hazardous waste treatment facility without a permit is prohibited.

62. At the time of the April 2011 inspection, rags were generated from cleaning presses and generated from cleaning glue from equipment in the binding process. The facility has determined that waste rags are D001 hazardous waste because the solvent is placed directly onto the rags without dilution. Waste rags are stored in approximately six unlabeled and open satellite containers located throughout the building. According to several facility representatives, when the waste rags are placed in the satellite containers, they are wet enough that liquid can be wrung from the rags. The rags are placed in open containers with a grate in the bottom to allow liquid to drain from the rags and the liquid is then placed in the 55-gallon containers holding waste solvent for disposal. According to the facility representative, the waste rags are dried further on a rack located in a loading dock in the northwest corner of the building and this drying rack has been in place for 10 to 12 years. The inspector determined that the facility was treating hazardous waste rags without a permit by drying them on a rack.

63. As stated in paragraphs 28 through 62 above, Respondent was not meeting the conditions set forth at 40 C.F.R. § 262.34 and by allowing waste rags to evaporate excess liquid, was engaged in "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10, and was therefore considered to be operating a hazardous waste storage facility without a permit, in violation of Section 3005 of RCRA, 42. U.S.C. § 6925.

Count 2
Failure to Comply with Universal Waste Requirements

64. The allegations stated in Paragraphs 10 through 20 above are realleged and incorporated as if fully set forth herein.

65. At the time of the April and August 2011 inspections, the inspector observed the Respondent failed to comply with a number of universal waste requirements, described below.

Failure to label containers with the words "Universal Waste – Battery(ies)," or "Waste Battery(ies),"or "Used Battery(ies)"

66. The regulations at 40 C.F.R. § 273.14(a) require that universal waste batteries, or container in which the batteries are contained, must be clearly labeled or marked with any one of the following phrases: "Universal Waste – Battery(ies)," or "Waste Battery(ies),"or "Used Battery(ies)."

67. At the time of the April 2011 inspection, the inspector observed three waste batteries on the facility representative's desk. The waste batteries appeared to be from cordless power tools. The waste batteries were not labeled.

68. Respondent's failure to properly label a universal waste container is a violation of 40 C.F.R. § 273.14(a).

Failure to date or otherwise track universal waste (batteries) to demonstrate length of time of accumulation

69. The regulations at 40 C.F.R. § 273.15(c) require that universal waste containers be dated or that a generator of universal waste otherwise track universal waste to demonstrate the length of time of accumulation.

70. At the time of the April 2011 inspection, the inspector observed three waste batteries on the facility representative's desk. The waste batteries appeared to be from cordless power tools. The waste batteries were not dated.

71. At the time of the August 2011 inspection, the inspector observed used lamps inside two round cardboard containers, and three original fluorescent lamp cardboard containers in the less-than-180-day container accumulation area. The inspector observed approximately 30, used, 4-foot, silver-tipped lamps; 30, used, 4-foot, green-tipped lamps; and 50, used, 8-foot, silver tipped lamps. The inspector observed some broken, used lamps inside the cardboard box that contained the 4-foot lamps. None of the containers were dated and the inspector did not observe that the facility had any other way of tracking universal waste accumulation time.

72. Respondent's failure to properly date or otherwise track length of time of accumulation of a universal waste storage container is a violation of 40 C.F.R. § 273.15(c).

Failure to label containers with the words "Universal Waste – Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)"

73. The regulations at 40 C.F.R. § 273.14(e) require that universal waste containers be labeled or marked clearly with one of the following phrases: "Universal Waste – Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

74. At the time of the August 2011 inspection, in the less-than-180-day hazardous waste container accumulation area, the inspector observed used lamps inside two, round cardboard containers, and three, original fluorescent lamp cardboard containers. The inspector observed approximately 30 used, 4-foot, silver-tipped lamps; 30 used, 4-foot, green-tipped lamps; and 50 used, 8-foot, silver tipped lamps. The inspector observed some broken used lamps inside the cardboard box that contained the 4-foot lamps. The 4-foot and 8-foot cardboard containers provided by the facility's lamp waste recycler were labeled only as "Universal Waste". The inspector determined that the facility failed to label or clearly mark each universal waste-lamp or container or package with one of the following phrases: "Universal Waste-Lamps," "Waste Lamps," or "Used Lamps."

75. Respondent's failure to properly label a universal waste container is a violation of 40 C.F.R. § 273.14(e).

Failure to maintain used lamps in a closed, structurally sound container

76. The regulations at 40 C.F.R. § 273.13(d)(1) require that universal waste containers be structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

77. At the time of the August 2011 inspection, the inspector observed used lamps inside two, round cardboard containers, and three, original fluorescent lamp cardboard containers in the less-than-180-day container accumulation area. The inspector observed approximately 30 used, 4-foot, silver-tipped lamps; 30 used, 4-foot, green-tipped lamps; and 50 used, 8-foot, silver tipped lamps. The inspector observed some broken used lamps inside the cardboard box that contained the 4-foot lamps. None of the used lamp cardboard containers were closed at the time of the inspection.

78. Respondent's failure to maintain used lamps in a closed, structurally sound container is a violation of 40 C.F.R. § 273.13(d)(1).

III. CONSENT AGREEMENT

79. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

80. For the purposes of this settlement only, Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

81. For the purposes of this settlement only, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

82. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

83. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

84. This CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

85. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

86. Respondent certifies that by signing this CAFO that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

87. The effect of settlement described in Paragraph 84 above is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 86, above, of this CAFO.

A. Supplemental Environmental Projects

88. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Projects ("SEPs"), which the parties agree are intended to secure significant environmental and/or public health benefits. Respondent shall conduct an energy audit and conduct lighting replacement, intended to reduce the universal waste stream at Respondent's facility, at a cost of no less than Sixty-Five Thousand Six Hundred and Twelve Dollars ($65,612), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

89. The total expenditure for the SEPs shall be no less than $65,612 and the SEPs shall be completed no later than 120 days from effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

90. Within thirty (30) days of completion of the SEPs, Respondent shall submit a SEP Completion Report to the EPA. The SEP Completion Report shall contain the following:

(i) A detailed description of the SEP as implemented; and

(ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.

(iii) All reports shall be directed to the following:

Kevin Snowden
Waste Enforcement and Material Management Branch
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

91. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. 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 is being 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 is being made.

92. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEPs as set forth in paragraphs 88 and 89 of this CAFO and/or to the extent that the actual expenditures of the SEPs does not equal or exceed the cost of the SEPs described in paragraphs 88 and 89 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) and (c) of this paragraph, if the SEPs are not completed satisfactorily and timely pursuant to the agreement set forth in paragraphs 88 and 89 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Forty-Nine Thousand and Four Hundred and Five

Dollars ($49,405), minus any documented expenditures determined by the EPA to be acceptable for the SEP, for a total equal to 150% of the mitigated SEP amount.

b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 90, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars ($250).

c. If the SEPs are not completed in accordance with paragraphs 88 and 89 of this CAFO, but the EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEPs, Respondent shall not be liable for any stipulated penalty.

93. If EPA identifies any deficiencies in the SEP Completion Report, EPA will notify Respondent and permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 94 and 95, herein.

94. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

95. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

96. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement (other than this CAFO), grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

97. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no

such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

98. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

99. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 91 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

100. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

101. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

B. Reservation of Rights

102. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Two Thousand Five Hundred Dollars ($32,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to $32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004, and January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are authorized.

103. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and

conditions of this CAFO.

104. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

105. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a mitigated civil penalty of Ten Thousand Eight Hundred and Five Dollars ($10,805). The payment must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, KS 66219

and to:

Kristen Nazar
Office of Regional Counsel
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, KS 66219

B. Parties Bound

4. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

C. Termination

5. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Complainant:
The United States Environmental Protection Agency

4-17-14
Date

Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

4/16/14
Date

Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

For Respondent:
Colorfx, LLC

4-3-14
Date

Signature

DAVID FEHRER
Printed Name

VP of Operations
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

4-29-14
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

ATTACHMENT A: Supplemental Environmental Projects (SEP)

SEP 1: Comprehensive Energy Audit

ColorFx will conduct comprehensive energy audits of its Urbandale and Newton facilities. These audits will include a comprehensive review of ColorFx's electrical, water, and natural gas usage. They will look at the historical data from utility bills over last 12 months, assess ColorFx's energy correction factors, electric components in the buildings, and efficiencies and deficiencies within systems, and provide recommendations on upgrades including costs and payback times.

Scope of work:
The electrical systems will be assessed using the following methods:

1. **Infrared Thermographic Imaging Service:** Utilize state-of-the-art instrumentation to identify and document temperatures that exceed NFPA Standard 70B recommendations, i.e., high resistance electrical connections, current overload, defective circuit breakers and/or defective insulator conditions. This information will be used to reduce the risk of brownouts and blackouts, as well as to eliminate safety and fire hazards.

2. **Ultrasonic Service:** Measure and record sound waves that are above audible sound (16-18 kHz). This service will be used to complement the infrared service to determine if corona, tracking, or arcing are present and to assure the quality and integrity of ColorFx's electrical system.

3. **True RMS Voltage and Current Service:** Capture and record the square root of the average square of the instantaneous magnitude of the voltage and current. This service will be used to determine if the correct voltage and current is present to properly operate ColorFx's equipment and optimize the equipment's life cycle.

4. **Voltage Drop Service:** Measure and record the different voltages at the two terminals of passive impedance. This service will be used to determine if ColorFx's electrical components, i.e., circuit breakers, contact surfaces, etc., are operating properly to reduce hazards and equipment destruction.

5. **Voltage and Current Harmonics Service:** Capture and record Total Harmonic Distortion-Voltage (THDV) and Total Harmonic Distortion-Current (THDC) that exceed IEEE recommendations. This service will be used to determine if ColorFx's harmonic contaminations are within tolerance levels. In addition, this service is designed to assure accurate power (kW) charges and to minimize the risk of damage to microelectronic equipment, transformers, circuit breakers, motors, etc.

6. **Visual and Mechanical Inspections:** Interior and exterior of all components will be inspected to ascertain whether it performance remains within specified limits and, if necessary, certain adjustments will be made to ensure that performance remains within specified limits. The

inspections will also identify corrosion, rust and discoloration, leaks, safety hazards, applicable electric code violations, grounding, physical damage and the general condition of components.

7. **Phase-Balance Service:** Test to assure that the phases in ColorFx's electrical system are balanced. This service is used to address unbalanced components that increase power quality problems, such as total harmonic distortion and increased temperature rise of devices and current-carrying conductors.

8. **Perform an Analysis of the Electrical Distribution System**: Analysis will be performed pursuant to NFPA 70E and calculated in accordance with IEEE 1584.2002. The analysis shall be completed for the equipment identified during the auditors' walk through visit of ColorFx's facilities. As listed in NEC 110.16 and NFPA 70E, a report will be provided that will include:

    a. Study output;

    b. Current one-line drawing of the electrical distribution equipment;

    c. Equipment labeling; and

    d. Recommendations on deficiencies, if found.

All required data collection on the electrical distribution equipment and feeders will be performed by state licensed journeymen electricians. All proper PPE will be utilized during the data collection process. The electrical distribution equipment will not require an outage during the data collection. All arc flash rating calculations will be performed by a licensed engineer.

Lighting assessments and water usage assessments will be conducted by a plant walkthrough, manual readings, and review of ColorFx's last twelve utility bills. The audits will identify areas where upgrades can be made, as well as costs and return on investment for those upgrades.

Because the energy audit will be focused on reducing energy conservation and reduction, it may examine the energy consumed by mercury-containing fluorescent light bulbs and result in the replacement of such light bulbs with high efficiency LED bulbs. The audit may also recommend changes to other practices, such as the use of certain batteries or other mercury-containing equipment, that will reduce these waste streams. Finally, the audit may recommend changes to the voltage used at the Colorfx facilities. Such recommendations could potentially extend the life of light bulbs and other mercury-containing equipment, correspondingly reducing the Colorfx's generation of universal waste.

TimeLine:

ColorFx anticipates that the audits will begin this fall. The lighting water and natural gas assessments will require one day at each location, and approximately 2-3 weeks to review utility bills and assemble a list of costs, energy savings opportunities, and return on investment times. The equipment assessments will require approximately two weeks to complete at each site. The electrical distribution and line

diagrams will require approximately 90 days from commencement and will include approximately one week onsite at each location.

Cost:

Total Cost for the SEP: **$47,882.00**

Compliance with SEP Requirements:

This project complies with EPA's SEP policy. The audit project is environmentally beneficial because it will reduce ColorFx's pull on the power grid and result in the generation of less universal waste. For example, ColorFx may use the results of the audit to replace fluorescent light bulbs with LED lights that use less power and are replaced far less frequently. Likewise, a nexus exists between the violations alleged by EPA and the SEP because the project reduces the overall risk to public health and the environment surrounding ColorFx facilities by reducing the amount of waste generated by ColorFx. The SEP also may reduce the generation of universal waste—which formed the basis for some of EPA's allegations—by causing ColorFx to replace conventional light bulbs with LED or other efficient bulbs, or to replace or reduce reliance on other mercury containing equipment. Finally, this project fits within the "pollution prevention assessment and audit" category of authorized SEPs because ColorFx will commission a systemic review of specific processes and operations to reduce the generation of waste.

SEP 2: Lighting Replacements

ColorFx will replace certain facility lighting at its Newton facility in order to reduce its energy output, as well as reduce the amount of hazardous waste and universal waste that it generates, manages, and disposes of. ColorFx anticipates starting the audits this fall, provided that the U.S. Environmental Protection Agency has accepted this Supplemental Environmental Project ("SEP") by that date.

Scope of work: The following lighting will be upgraded/changes as follows:

1. **External Lighting of Parking Lot and Building:** Currently, Colorfx uses four 250W high pressure sodium (HPS) wall packs that have a fixture input of 300 watts. Those will be replaced with four light-emitting diode (LED) packs that will have a fixture input of 30 watts. This change will lower the system wattage from 1200 watts to 120 watts. In addition, while the existing wall packs contain 31.9 mg of mercury per lamp, the LED replacement bulbs will contain no mercury and thus, once spent, will not be considered either a hazardous waste or a universal waste. In light of this, the replacements will also result in a reduction of the amount of hazardous and/or universal waste produced on site. Waste reduction will also result from an increase in the expected life of the LED replacement bulbs. The LED replacement bulbs will have double the lamp life expectancy—from 24,000 hours to 50,000 hours—thereby reducing the frequency with which they will have to be replaced and the total number of spent bulbs that will ultimately need to be managed and disposed of from the facility.

2. **Warehouse Office:** Colorfx currently has four 2-Lamp F34T12 fluorescent wraps with a fixture input of 80 watts. Colorfx will replace those with four 2-Lamp F32T8 Wraps with a fixture input of 58 watts. Both the current 2-Lamp F34T12 fluorescent wraps and the 2-Lamp F32T8 Wraps that will replace them have a lamp life expectancy of 24,000 hours. However, the replacement will reduce system wattage from 320 watts to 232 watts. The replacement bulbs also have a lower mercury content than the existing lamps—1.7 mg of mercury per lamp instead of 4.4 mg of mercury per lamp—and pass TCLP, thus they would not be considered either a hazardous waste or a universal waste. The replacement will therefore reduce the amount of hazardous and/or universal waste produced at the site.

3. **Warehouse**: The warehouse itself is currently lit with 39 400W MH high bays bulbs with fixture inputs of 455 watts. These will be replaced with 4-LAMP T5HO High-Bays with OCC sensors that have a fixture input of 220 watts. The sensors automatically turn the lights off if no movement is detected in the area. These changes will reduce the system wattage from 17,745 to 8550 watts. The replacement of the current warehouse high bays will reduce the amount of mercury per lamp from 52 mg to 1.4 mg. The low-mercury, replacement bulbs pass the TCLP assessment and, therefore, once spent are not considered a hazardous waste or a universal waste. The replacement bulbs will have a useful life expectancy that is 25 percent greater than the current bulbs, thereby reducing the frequency with which they will have to be replaced and the total number of spent bulbs that will ultimately need to be managed and disposed of from the facility.

TimeLine:

Based on our current understanding of third-party contractor scheduling, we believe the bulb replacement SEP can be completed this fall, concurrently with the energy audit SEP that Colorfx has summarized previously.

Cost:

Total Cost for the SEP: **$21,820 ($17,730 excluding internal costs related to maintenance and EHS personnel).**

Compliance with SEP Requirements:

The bulb replacement SEP comports with EPA's SEP policy by not only reducing energy consumption, but also significantly reducing the amount of hazardous waste and universal waste that will be managed by the facility. The waste reduction aspect of this SEP has a direct nexus to the alleged violations in the Colorfx matter.

IN THE MATTER OF COLORFX, LLC, Respondent
Docket No. RCRA-07-2012-0031

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to Respondent:

Lynn Kornfeld
FAEGRE BAKER DANIELS LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532, USA

Dated: 4/29/14

Kathy Robinson
Hearing Clerk, Region 7