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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2016-0153
)	
PACE INTERNATIONAL, LLC,)	CONSENT AGREEMENT
)	
Wapato, Washington)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Pace International, LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

Ap

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. On March 6, 2015, EPA notified Respondent and the Confederated Tribes and Bands of the Yakama Nation that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.5. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 301(a) and 301(d)(4) of the CAA, 42 U.S.C. § 7601(a), and 7601(d)(4), EPA has adopted a Federal Implementation Plan (“FIP”) that includes air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and



dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.”

3.9. VOCs are “air pollutants” as that term is defined at 40 C.F.R. § 49.123(a).

3.10. Respondent is a limited liability company organized in the State of Washington.

3.11. Respondent is a “person” as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.12. Respondent has operated an agricultural products manufacturing facility located at 5661 Branch Road in Wapato, Washington, since at least January 1, 2006 (“Facility”).

3.13. The Facility is located within the exterior boundary of the Yakama Indian Reservation.

3.14. Since at least January 1, 2006, Respondent has manufactured post-harvest fruit coatings, including “Shield-Brite” at the Facility.

3.15. Manufacture of Shield-Brite, as well as some other coatings and chemical intermediaries used to make coatings, (collectively referred to as “coatings”) causes VOCs to be emitted into the ambient air.

3.16. The Facility is an “air pollution source” as that term is defined at 40 C.F.R. § 49.123(a).

3.17. The Facility is a “stationary source” as that term is defined at Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

3.18. Pursuant to 40 C.F.R. §§ 49.11106(k) and 49.139, EPA issued a Non-Title V operating permit numbered R10NT500200 to Respondent for the Facility on December 4, 2006 (“Non-Title V Permit” or “Permit”).

3.19. Section 2.2 of the Permit establishes an 80 tons-per-year limit on VOC emissions from the manufacture of Shield Brite products determined on a rolling 12-month basis by



Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the Federal Air Rules for Indian Reservations in Region 10 (“FARR”) and became effective on June 7, 2005.

3.2. The FIP for the Confederated Tribes and Bands of the Yakama Nation is identified at 40 C.F.R. §§ 49.11101 through 11130. The FARR provisions that apply within the exterior boundary of the Yakama Indian Reservation are incorporated by reference at 40 C.F.R. § 49.11106 (a) through (k).

3.3. Pursuant to 40 C.F.R. § 49.139, owners or operators of an air pollution source who wish to obtain a Federally-enforceable limitation on the source’s actual emissions or potential to emit may apply for a Non-Title V operating permit.

3.4. The Non-Title V operating permit requirements of 40 C.F.R. § 49.139 are incorporated into the FARR provisions that apply to the Confederated Tribes and Bands of the Yakama Nation at 40 C.F.R. § 11106(k).

3.5. On March 21, 2011, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources at 40 C.F.R. Part 63, Subpart JJJJJ.

3.6. The term “air pollution source” is defined at 40 C.F.R. § 49.123(a) to mean “any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.”

3.7. The term “air pollutant” is defined at 40 C.F.R. § 49.123(a) to mean “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter that is emitted into or otherwise enters the ambient air.”

3.8. The term “volatile organic compounds” or “VOCs” is defined at 40 C.F.R. § 51.100(s) to mean “any compound of carbon, excluding carbon monoxide, carbon



calculating the emissions (tons) for each month and adding the emissions calculated for the previous 11 months.

3.20. Section 2.2 of the Permit requires Respondent to calculate monthly VOC emissions using a mass balance equation for some of the chemicals Respondent uses, as specified in Equation 2 of the Permit and a specified emissions factor for other chemicals Respondent uses as specified in Equation 1 of the Permit.

Count 1: Failure to track, calculate and record monthly and rolling 12-month VOC Emissions

3.21. Section 3.2 of the Permit states that “the permittee shall track, calculate, and record monthly and rolling 12-month VOC emissions records for Shield Brite materials including the following: 3.2.1. VOC emissions determined using Equation 1; 3.2.2. VOC emissions determined by mass balance using Equation 2”

3.22. For each month from at least January 1, 2010, until April 1, 2015, Respondent failed to track, calculate and record rolling 12-month VOC emissions using Equations 1 and 2 of the Permit, in violation of Sections 3.2.1 and 3.2.2 of the Permit.

Count 2: Failure to timely conduct boiler energy assessment

3.21. Respondent operates two oil-fired boilers, Boiler #1 and Boiler #2 at the Facility, that are subject to the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boiler Area Sources, 40 C.F.R. Part 63, Subpart JJJJJJ.

3.22. Boiler #1 and Boiler #2 each have a heat input capacity of greater than 10 million British thermal units per hour (Btu/hr).

3.23. The regulation at 40 C.F.R. § 63.11201(b) and Table 2 of 40 C.F.R. Part 63, Subpart JJJJJJ require that existing oil-fired boilers with heat input capacity of 10 million Btu/hr or greater must have a one-time energy assessment performed by a qualified energy assessor.

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3.24. The regulation at 40 C.F.R. § 63.11196(a)(3) requires that existing affected boilers subject to the energy assessment requirement must achieve compliance with the energy assessment requirement no later than March 21, 2014.

3.25. Respondent conducted an energy assessment on Boiler #1 and Boiler #2 on November 10, 2014, 234 days after the March 21, 2014, deadline.

3.26. Accordingly, Respondent violated 40 C.F.R. § 63.11196(a) and 42 U.S.C. § 7412 between March 21, 2014 and November 10, 2014.

Count 3: Failure to timely submit Notification of Compliance Status Report

3.27. The regulation at 40 C.F.R. § 63.11225(a)(4) requires Respondent to submit a Notification of Compliance Status Report (“NOCSR”) to EPA by July 19, 2014, that includes the information and certification(s) of compliance in 40 C.F.R. § 63.11225(a)(4)(i) through (v), as applicable, and is signed by a responsible official.

3.28. The regulation at 40 C.F.R. § 63.11214(c) requires Respondent to submit a signed statement in the NOCSR that indicates an energy assessment of the boiler and its energy use systems was completed according to 40 C.F.R. Part 63, Subpart JJJJJ, Table 2 and is an accurate depiction of the facility.

3.29. The regulation at 40 C.F.R. § 63.11214(b) requires Respondent to submit a signed statement in the NOCSR that indicates Respondent conducted initial tune-ups of Boiler #1 and Boiler #2.

3.30. Respondent submitted a signed statement and NOCSR to EPA on December 30, 2014, 164 days after the July 19, 2014, deadline, indicating that an energy assessment of Boiler #1 and Boiler #2 and the boilers’ energy use systems was completed according to 40 C.F.R. Part 63, Subpart JJJJJ, Table 2 and Respondent conducted initial tune-ups of Boiler #1 and Boiler #2.

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3.31. Accordingly, Respondent violated 40 C.F.R. § 63.11225(a)(4) and 42 U.S.C. § 7412 between July 19, 2014, and December 30, 2014.

3.32. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$77,134 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's



check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Lambert.aaron@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the



Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. Respondent agrees to implement a Supplemental Environmental Project ("SEP") consisting of acquisition and operation of sanitary duty pumps and associated hoses in accordance with all provisions described in the Consent Agreement. The SEP herein shall consist of the following:

4.9.1. Within 60 days of the effective date of the Final Order, Respondent shall acquire and install ten (10) 2-inch 710 style stainless steel pumps, one (1) 3-inch SS double air diaphragm pump, and five hundred (500) feet of 2-inch parker crush resistant hoses of various lengths specific to each operation ("Equipment"). Within 10 business days following receipt of the Equipment, Respondent shall notify EPA of the date Respondent received and installed the Equipment. Respondent shall include proof of receipt in the notice, such as photographs and/or vendor delivery receipts.



4.9.2. For at least one year after acquiring and installing the Equipment, Respondent shall transfer all VOC-containing liquids associated with manufacturing coatings for treatment of agricultural products that are pumped at the Facility using the Equipment. Notwithstanding the provisions in Paragraph 4.10, the requirement of this Paragraph shall be excused for the purposes of routine maintenance and repair.

4.10. Respondent's deadlines to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A Force Majeure event does not include, inter alia, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.11. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that Respondent in good faith estimates that the cost to implement the SEP, exclusive of internal labor costs, is \$78,427.

4.12. Respondent also certifies that, as of the date of this Consent Agreement, Respondent 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 another agreement,



under a grant, or as injunctive relief in any other case. Respondent further certifies: that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement; and that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.13. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 4.9.

4.14. Respondent shall submit a SEP Completion Report to EPA within 90 days after expiration of the one year minimum operating period of the Equipment required by Paragraph 4.9.2. The SEP Completion Report shall contain the following information:

4.14.1 A description of the SEP as implemented;

4.14.2 Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and documentation providing evidence of the project's completion (including but not limited to photos, vendor invoices or receipts, correspondence) and documentation of all SEP expenditures;

4.14.3 A description of any problems encountered and the solutions thereto, including Equipment leaks and the number of days the Equipment was not used due to maintenance or repair; and

4.14.4 A description of the environmental and public health benefits resulting from implementation of the SEP, including an estimation of VOC emissions prevented through use of the Equipment.

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4.15. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports related to the SEP as required by this Consent Agreement by first class mail, overnight mail, or hand delivery to:

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.16. Respondent agrees that EPA may inspect the Facility at any time, until the SEP Completion Report is accepted pursuant to Paragraph 4.18 in order to confirm that the SEP is being undertaken in conformity with this Consent Agreement. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein. This Consent Agreement in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits.

4.17. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement until the SEP Completion Report is accepted pursuant to Paragraph 4.18, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Consent Agreement, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:



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

4.18. Following receipt of the SEP Completion Report described in Paragraph 4.14, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.19.

4.19. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement and this failure was not caused solely by events which constitute a *Force Majeure* as defined by Paragraph 4.10, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraphs 4.20-4.21. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.20. If Respondent fails to satisfactorily complete the SEP required by this Consent Agreement, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amounts:

4.20.1. If Respondent fails to acquire the Equipment by the deadline specified in Paragraph 4.9, then Respondent shall pay \$500 per day.

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4.20.2. If Respondent fails to operate the Equipment as specified in Paragraph 4.9.2, then Respondent shall pay \$250 for each day the Equipment is not operated.

4.20.3. If Respondent fails to submit to EPA the SEP Completion Report by the deadline in Paragraph 4.14, then Respondent shall pay \$200 per day.

4.21. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 and 4.6. Interest and late charges shall be paid as stated in Paragraphs 4.7 and 4.8. Total stipulated penalties imposed under paragraph 4.19-4.20 shall not exceed \$30,000.

4.22. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

“This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Clean Air Act.”

4.23. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.19-20, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.24. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.25. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.



4.26. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.27. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.28. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.29. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

09/14/2016

FOR RESPONDENT:



ROBERTO CARPENTIER
Executive Vice President and Chief Operating Officer
Pace International, LLC.

DATED:

9/15/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2016-0153
PACE INTERNATIONAL, LLC,)	FINAL ORDER
)	
Wapato, Washington,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

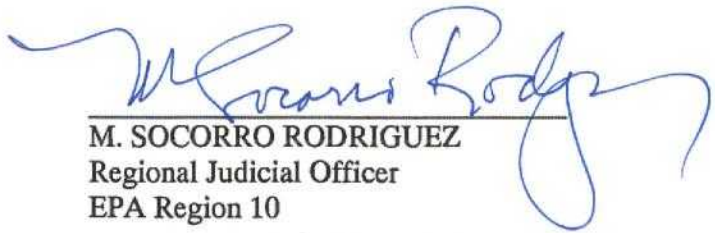
1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.



1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16th day of September, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Reg.

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Pace International, LLC, Docket No.: CAA-10-2016-0153**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

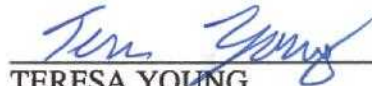
The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Roberto Carpentier
Executive Vice President and Chief Operating Officer
Pace International, LLC
1101 Western Avenue, Suite 807
Seattle, Washington 98104

DATED this 26 day of September, 2016.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10