

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

In the matter of:

**Vorbeck Materials Corp.
8306 Patuxent Range Road, Unit #106
Jessup, MD 20794**

Respondent,

**Vorbeck Materials Corp.
8306 Patuxent Range Road, Unit #106
Jessup, MD 20794**

Facility.

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:
: **U.S. EPA Docket RCRA-03-2017-0133**
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: **Proceeding under Section 3008(a) and (g)**
: **of the Resource Conservation and**
: **Recovery Act, as amended,**
: **42 U.S.C. § 6928(a) and (g)**
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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division ("Complainant"), U.S. Environmental Protection Agency, Region III ("EPA" or the "Agency"), and Vorbeck Materials Corp. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and the accompanying Final Order simultaneously commence and conclude this administrative proceeding against the Respondent.

3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland has been granted final authorization to administer its hazardous waste management program, set forth at the Code of Maryland Regulations (“COMAR”), Title 10, Subtitle 51 *et seq.*, in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The State of Maryland Hazardous Waste Management Regulations (“MdHWMR”) originally were authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13, were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised federally-authorized program have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
4. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment if a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
5. This Consent Agreement (“CA”) and the accompanying Final Order (“FO”) (collectively, the “CAFO”) address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, certain federally-authorized Maryland hazardous waste regulations, set forth at COMAR, Title 26, Subtitle 13 *et seq.*, and certain of the federal hazardous waste regulations, set forth at 40 C.F.R. Parts 260–266, for which the State of Maryland has not been granted authorization to administer in lieu of the federal hazardous waste management program under HSWA, in connection with Respondent’s facility. Respondent’s facility is located at 8306 Patuxent Range Road, Unit #106, Jessup, Maryland 20794 (“Facility”) and is further described below.
6. Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized MdHWMR requirements cite those respective provisions as the authority for such allegations or conclusions.
7. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated August 8, 2016, EPA notified the Maryland Department of the Environment (“MDE”) of EPA’s intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

9. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in the CAFO, except as provided in Paragraph 8, above.
10. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
12. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
13. Respondent shall bear its own costs and attorney's fees.
14. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. EPA has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).
17. Respondent is a corporation organized under the laws of the State of Delaware. Respondent is now, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).
18. The Facility consists of 35,000 square feet and occupies several suites within a building in Jessup, Maryland. At the Facility, Respondent performs research, design, development, and manufacturing of radio-frequency identification devices, antennas, wearables, graphene, batteries, conductive inks and enhanced rubber.
19. On or about March 25, 2008, Respondent submitted a Notification of Hazardous Waste Activity ("Notification") for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, to EPA, Region III, identifying the Facility as a generator of hazardous waste. Subsequently, the Facility was assigned EPA I.D. Number MDD985403120.

20. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, the “operator” and the “owner” of the Facility, as those terms are defined in COMAR 26.13.01.03.B(58) and (59), during the period of the violations alleged in this CAFO. Respondent has owned and operated the Facility since at least 2006.
21. As described below, at all times relevant to the allegations set forth in this CA, Respondent is, and has been, a “generator” of “solid waste” and “hazardous waste” at the Facility, as these terms are defined in COMAR 26.13.01.03.B(29), (73) and (31).
22. At all times relevant to the allegations set forth in this CA, and as described below, Respondent is, and has been, engaged in the “storage” of “solid waste” and “hazardous waste” in “containers” at the Facility, as those terms are defined in COMAR 26.13.01.03.B(76), (73), (31) and (9).
23. Respondent generates hazardous waste solvents, with EPA Hazardous Waste Nos. D001, F003 and F005.
24. At all times relevant to the allegations set forth in this CA, Respondent’s Facility is, and has been, a hazardous waste storage “facility” as that term is defined in COMAR 26.13.01.03.B(23).
25. On March 3-4, 2015, a duly-authorized representative of EPA (“EPA Inspector”) conducted a Compliance Evaluation Inspection at the Facility (the “CEI” or “Inspection”), to examine the Respondent’s compliance with the federally-authorized MdHWMR and applicable federal hazardous waste regulations.
26. On April 27, 2016, EPA issued to Respondent a formal information request letter (“IRL”), pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent provided information to EPA in response to this IRL, via letters dated June 9 and July 5, 2016 (“IRL Response”).
27. On October 20, 2016, EPA sent a Request to Show Cause and Request for Information (“Show Cause letter”) to Respondent advising it of EPA’s preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s compliance with the MdHWMR and federal hazardous waste regulations at the Facility. Respondent provided additional information to EPA in response to the Show Cause letter.
28. On the basis of EPA’s findings during the Inspection, Respondent’s IRL Response, and Respondent’s response to EPA’s Show Cause letter, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, certain federally-authorized MdHWMR requirements promulgated thereunder, and certain applicable federal hazardous waste regulations.

COUNT I
**(Operating a Treatment, Storage, and Disposal
 Facility without a Permit or Interim Status)**

29. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
30. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, with exceptions not relevant to this matter, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
31. Respondent has never had a permit or interim status, pursuant to COMAR 26.13.07.01 or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility.

Generator Accumulation of Hazardous Waste (the "Generator Permit Exemption")

32. COMAR 26.13.03.05E(1) provides:
- E. Accumulation Time.
- (1) A generator may accumulate hazardous waste on-site without a permit for 90 days or less if:
- (a) The waste is shipped off-site within 90 days to a permitted facility or placed in an on-site permitted facility;
- (b) The generator accumulates the waste:
- (i) In containers,
- (ii) In tanks, or
- (iii) On drip pads, if the waste is drippage from a wood-preserving process, precipitation, or surface water run-on;
- * * *
- (g) The generator complies with the requirements for owners or operators in COMAR 26.13.0S.02G [personnel training], .03 [preparedness and prevention], and .04 [contingency plan and emergency procedures];
33. Although the provisions of COMAR 26.13.03.05E(1) provide hazardous waste generators with an exemption from the permitting requirements for the temporary accumulation (90 days or less) of hazardous waste generated by a facility (referred to here as the "Generator Permit Exemption"), Respondent failed to meet the conditions necessary to qualify for the exemption set forth in COMAR 26.13.03.05E(1).

34. The following acts or omissions, further described below, prevented Respondent from meeting the regulatory permit exemption conditions in COMAR 26.13.03.05(E)(1).
35. In 2014 and 2015, Respondent generated 35 drums of waste and identified such waste as non-hazardous. However, these drums may have contained debris contaminated with regulated hazardous waste solvents. Instead of being sent to a RCRA permitted hazardous waste disposal facility, these shipments were sent to a RCRA Subtitle D solid waste facility:
- a. A shipment sent 11/19/2014, containing eleven 55-gallon drums;
 - b. A shipment sent 3/11/2015, containing ten 55-gallon drums; and
 - c. A shipment sent 4/10/2015, containing thirteen 55-gallon drums and one 30-gallon drum.
36. At the time of the RCRA Inspection on March 3 - 4, 2015, the following acts or omissions prevented Respondent from meeting the regulatory permit exemption requirements in COMAR 26.13.03.05(E)(1):
- a. Respondent was storing one 55-gallon drum of D001/F003/ F005 hazardous waste, dated October 29, 2014, on-site at the Facility for a time period in excess of the 90-day storage limitation set forth at COMAR 26.13.03.05E(1).
 - b. Respondent was storing two 55-gallon drums of D001 product with no further commercial value and one 55-gallon drum of D001/F003/F005 hazardous wastes. These drums were not clearly marked with the date upon which each period of hazardous waste accumulation began, as required by the applicable permit exemption condition set forth at COMAR 26.13.03.05E(1)(e). These drums were not labelled or marked clearly with the words "Hazardous Waste," as required by the applicable permit exemption condition set forth at of COMAR 26.13.03.05E(1)(f)(ii).
 - c. Respondent had several satellite containers which were storing hazardous waste at the Facility, which were not properly labelled. Respondent was storing two 55-gallon drums of D001 hazardous waste, two open pails of D001 hazardous waste, and one small open pot of D001 hazardous waste, which were not marked with the words "Hazardous Waste" or other words that identify the contents of the containers, as required by the applicable permit exemption condition set forth at of COMAR 26.13.03.05E(3)(b).
 - d. Respondent failed to keep two pails of D001 hazardous waste closed except when adding or removing waste, as further described in Count IV,

- below, as required by COMAR 26.13.05.09D, and the applicable permit exemption condition set forth at COMAR 26.13.03.05E(1)(d).
- e. Respondent failed to maintain at the Facility an adequate Contingency Plan for the Facility, as further described in Count V, below, as required by COMAR 26.13.05.04B(1), and the applicable permit exemption condition set forth at COMAR 26.13.03.05E(1)(g).
 - f. Respondent failed to provide annual hazardous waste training, as further described in Count VI, below, as required by COMAR 26.13.05.02G(1) and (3), and the applicable permit exemption condition set forth at COMAR 26.13.03.05E(1)(g).
 - g. Respondent failed to maintain adequate training and personnel records, as described in more detail in Count VII, below, as required by COMAR 26.13.05.02G(4), and the applicable permit exemption condition set forth at COMAR 26.13.03.05E(1)(g).
37. For each of the reasons and during each of the dates and time periods identified in Paragraphs 35 and 36, above, Respondent failed to comply with the permit exemption conditions set forth in COMAR 26.13.03.05E(1)(a), E(1)(d), E(1)(e), E(1)(f)(ii) and E(1)(g), as identified in Paragraph 36, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator at the Facility, as required pursuant to COMAR 26.13.03.05E(1), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
38. For each of the reasons and during each of the dates and time periods identified in Paragraphs 35 and 36, above, Respondent engaged in the operation of a hazardous waste storage facility (*i.e.*, the Facility) without having interim status or obtaining a permit for the Facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or COMAR 26.13.07.01A.
39. On November 19, 2014, March 11, 2015, April 10, 2015, and March 3 - 4, 2015, Respondent violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility (*i.e.*, the Facility) without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II
(Failure to Conduct a Waste Determination)

40. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
41. The provisions of COMAR 26.13.03.02A requires that a person who generates a solid waste, as defined in 26.13.03.02 shall determine whether the waste is a hazardous waste using one of the specified methods, as set forth in COMAR 26.13.02.02A(1) – (3).

42. From February 1, 2010 to March 31, 2015, Respondent generated solid waste at the Facility. However, Respondent failed to perform in a timely manner a waste determination on these wastes:
 - a. Approximately 147 drums of solid waste, which may have been mixed with spent solvent, wipes and personal protective equipment, EPA Hazardous Waste Nos. D001, F003 and F005.
 - b. One 55-gallon drum of D001/F003/F005 hazardous waste.
 - c. Four 55-gallon drums and two open pails of D001 hazardous waste
 - d. A container holding spent aerosol cans, but labeled and managed as universal waste.
43. From February 1, 2010 to March 31, 2015, Respondent violated the requirements of COMAR 26.13.03.02A by generating solid waste and failing to determine whether the solid waste described above was hazardous waste.

COUNT III

(Failure to Prepare a Manifest for Hazardous Waste Shipped Offsite)

44. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
45. The provisions of COMAR 26.13.03.04A(1) provide that a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal shall prepare a manifest on an EPA-approved form or an equivalent state form.
46. As described above, on the following occasions, Respondent offered hazardous waste shipments for transportation for off-site treatment, storage or disposal, but failed to prepare hazardous waste manifests for these shipments:
 - a. A shipment sent 11/19/2014, containing eleven 55-gallon drums, which was sent to a RCRA Subtitle D solid waste facility;
 - b. A shipment sent 3/11/2015, containing ten 55-gallon drums, which was sent to a RCRA Subtitle D solid waste facility;
 - c. A shipment sent 4/10/2015, containing thirteen 55-gallon drums and one 30-gallon drum, which was sent to a RCRA Subtitle D solid waste facility; and
 - d. Shipments sent between 10/2011 and 7/2014, containing 112 drums not determined or managed as hazardous waste, which were sent to a Subtitle C incinerator.

47. Between October 1, 2011 and July 31, 2014, and on November 19, 2014, March 11, 2015, and April 10, 2015, Respondent violated the requirements of COMAR 26.13.03.04A(1) by offering for off-site treatment, storage or disposal several shipments of hazardous waste, and failing to prepare for each of these shipments a hazardous waste manifest on an EPA-approved form or an equivalent state form.

COUNT IV

**(Failure to Keep Hazardous Waste Containers Closed
Except as Needed to Add or Remove Waste)**

48. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
49. The provisions of COMAR 26.13.05.09D, pertaining to the “Management of Containers,” require that “[a] container holding hazardous waste shall always be kept closed during storage, except when it is necessary to add or remove waste, and the container may not be opened, handled, or stored in any manner which may rupture the container or cause it to leak.”
50. At the time of the March 3-4, 2015 Inspection, there were two open pails of EPA Hazardous Waste No. D001 in Suite 104/105, at the Facility.
51. On March 3-4, 2015, Respondent violated the requirements of COMAR 26.13.05.09D by failing to keep containers holding hazardous waste closed except when it is necessary to add or remove waste.

COUNT V

(Failure to Maintain Adequate Contingency Plan)

52. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
53. The provisions of COMAR 26.13.05.04, pertaining to the “Contingency and Emergency Procedures,” provide as follows:
- A. Applicability. This regulation applies to owners and operators of all hazardous waste facilities [with an exception not herein applicable].
 - B. Purpose and Implementation of Contingency Plan.
 - (1) Every owner or operator shall have a contingency plan for his facility . . . designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or non-sudden release of

hazardous waste or hazardous waste constituents to air, soil, or surface water. . . .

C. Content of Contingency Plan.

(1) The contingency plan shall describe the actions facility personnel shall take . . . in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility[;]

* * *

(3) The plan shall describe the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services . . . [;]

(4) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator . . . and this list shall be kept up to date[;]

(5) The plan shall include a list of emergency equipment at the facility [; and]

(6) The plan shall include an evacuation plan for facility personnel” .

D. Copies of Contingency Plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility

54. At the time of the March 3-4, 2015 Inspection, in response to a request by the EPA Inspector, Respondent provided to the EPA Inspector a contingency plan for the Facility. This contingency plan did not include the home addresses and home phone numbers of the two individuals qualified to act as emergency coordinator at the Facility.

55. On March 3-4, 2015, Respondent violated the requirements of COMAR 26.13.05.04C(4) by failing to include, in the Facility’s contingency plan, the home addresses, and home phone numbers of two persons qualified to act as emergency coordinators at the Facility.

COUNT VI

(Failure to Provide Initial and Annual Hazardous Waste Training)

56. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

57. The provisions of COMAR 26.13.05.02G, entitled “Personnel Training,” provide, in relevant and applicable part, as follows:

(1) Program of Instruction or Training.

(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility’s compliance with the requirements of this chapter [and that] [t]he owner or operator shall ensure that this program includes all the elements described in the document required under [COMAR 26.13.05.02] § G(4)(c)

(b) This program shall . . . include instruction which teaches facility personnel hazardous waste management procedures . . . relevant to the positions in which they are employed.

(c) At a minimum the training shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems

(2) Facility personnel shall successfully complete the program required in [COMAR 26.13.05.02] § G(1), above, within 6 months after the effective date of these regulations or 6 months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later

(3) Facility personnel shall take part in an annual review of the initial training required in [COMAR 26.13.05.02] § G(1), above.

(4) The owner or operator shall maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of each employee filling each job.

(b) A written job description for each position listed under [COMAR 26.13.05.02] § G(4)(a), above

(c) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under [COMAR 26.13.05.02] § G(4)(a), above.

(d) Records that document that the training or job experience required under [COMAR 26.13.05.02] § G(1), (2), and (3) has been given to, and completed by, facility personnel.

(5) Training records on current personnel shall be kept until closure of the facility....

58. At the time of the March 3-4, 2015 Inspection, Respondent failed to provide requested records or other evidence to indicate or establish that it had provided initial or annual refresher hazardous waste management training of the type required pursuant to COMAR 26.13.05.02G(1), to employees with hazardous waste management responsibilities at the Facility.
59. Training records subsequently provided to EPA by Respondent in its IRL Response do not show that it had provided all of the required hazardous waste management training, of the type required pursuant to COMAR 26.13.05.02G(1), to Facility personnel engaged in hazardous waste management activities, between the years 2011 and 2016
60. From January 1, 2011 through December 31, 2016, Respondent violated the requirements of COMAR 26.13.05.02G(2) and (3) by failing to provide certain Facility personnel engaged in hazardous waste management activities at the Facility with: (a) the required initial hazardous waste training, described in COMAR 26.13.05.02G(1); and (b) the required annual review of such hazardous waste training.

COUNT VII

(Failure to Maintain Adequate Personnel Records)

61. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
62. On March 3-4, 2015, in response to a request by the EPA Inspector, Respondent failed to provide written job descriptions for each position at the Facility related to hazardous waste management, and associated written descriptions of the type and amount of both introductory and continuing training requirements for each person filling a position with hazardous waste management responsibilities at the Facility.
63. The written job descriptions subsequently provided to EPA by Respondent in its IRL Response failed to identify or to indicate that any hazardous waste training requirements had been established for, or provided to, Facility employees engaged in hazardous waste management positions at the Facility during calendar years 2011 through 2016, or to identify the requisite skill, education, qualifications and duties of the employees assigned to each such position.
64. From January 1, 2011 through December 31, 2016, Respondent violated the requirements of COMAR 26.13.05.02G(4)(c) by failing to maintain a written description of the type and amount of both introductory and continuing training to be given to each person holding a hazardous waste management position at the Facility.
65. From January 1, 2011 through December 31, 2016, Respondent violated the requirements of COMAR 26.13.05.02G(4)(d), by failing to have and maintain records to document that

the training or job experience required under COMAR 26.13.05.02G(1), (2), and (3) had been given to, and completed by, Facility personnel engaged in hazardous waste management activities during calendar years 2011-2016.

COUNT VIII

(Failure to Track Accumulation Dates of Universal Waste Batteries)

66. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
67. The provisions of COMAR 26.13.10.17B(3)(a) provides that a small quantity handler of universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the time it becomes a waste or is received.
68. The provisions of COMAR 26.13.10.17B(3)(b) provides that this demonstration can be made by placing the universal waste in a container marked with the earliest date that the universal waste in the container became a waste or by marking the individual items of universal waste with such date.
69. At the time of the March 3-4, 2015 Inspection, Respondent was storing one container of universal waste batteries that was not marked with the earliest date that the batteries in the container became a waste, and there was no other method for tracking the accumulation time.
70. On March 3-4, 2015, Respondent violated the requirements of COMAR 26.13.10.17B(3) by failing to mark one container of universal waste batteries with the earliest date that waste batteries began accumulating in the container, or providing another method for tracking their accumulation time.

IV. CIVIL PENALTIES

71. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of **TWENTY-EIGHT THOUSAND, TWO HUNDRED DOLLARS (\$28,200.00)**, which Respondent agrees to pay in accordance with the payment terms set forth in Paragraph 73, below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent. In order to avoid the assessment of administrative costs and late payment penalties in connection with such civil penalty, as further described at Paragraphs 78 through 81, below, Respondent must pay such civil penalty in accordance with the terms and schedule set forth in Paragraph 73. In addition to the payment of the civil penalty

described above, Respondent agrees to perform a Supplemental Environmental Project (“SEP”) as further described herein in Section V.

72. The civil penalty settlement amount set forth in Paragraph 71, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has also considered the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and the July 27, 2016 Memorandum by EPA Assistant Administrator, Cynthia Giles, entitled, “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation,” (effective August 1, 2016). The settlement in this proceeding is consistent with the provisions and objectives of Section 3008 of RCRA, and its implementing regulations.
73. The civil penalty of **TWENTY-EIGHT THOUSAND, TWO HUNDRED DOLLARS (\$28,200.00)** set forth in Paragraph 71, above, may be paid in three (3) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

Payment	Timing - Within this number of days of the date on which this CAFO is mailed to Respondent	Principal	Interest	Payment Amount
1	30	\$10,000	\$ 0.00	\$10,000
2	60	\$10,000	\$30.33	\$10,030.33
3	90	\$ 8,200	\$ 6.83	\$ 8,206.83
Total		\$28,200	\$37.16	\$28,237.16

74. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 73, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 78 through 81 below, in the event of any such failure or default.
75. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

76. Payment of the civil penalty set forth in Paragraph 71, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 78 through 81, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, i.e., **RCRA-03-2017-0133**;

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

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

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

Customer service contact: 513-487-2091

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

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

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

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

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

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

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

Contact: 866-234-5681

- h. On-Line Payment Option: WWW.PAY.GOV/paygov/

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

- i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

or by contacting Craig Steffen at 513-487-2091

77. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Natalie Katz
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street

Philadelphia, PA 19103-2029.

78. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
79. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
80. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
81. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
82. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

83. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's *Supplemental Environmental Projects Policy 2015 Update*.
84. Within 360 days from the effective date of this CAFO, Respondent will donate a First Responder Mobile Ad Hoc Network ("MANET") with Vorbeck Antennas, described below, to the Howard County Department of Fire and Rescue Services, Bureau of Emergency Services, Special Operations ("Department"). This equipment donation is intended to enhance the Department's emergency response capabilities. The equipment which shall be donated will consist of:

- a. 3 MPU-5 Radios – which transmit voice, video and data. Mobile Ad Hoc Networking radio, or 3 radios of similar quality.
 - b. 1 Tablet (Android) – for base station video and date (Sony Xperia or similar quality).
 - c. 1 Portable Camera – for live video feed (Go-Pro Hero or similar quality).
 - d. 8 Antennas with Cables and Connectors – SKU A02010105, which includes two spares, or 8 antennas with cables and connectors of similar quality.
 - e. 1 Set of Firefighter Clothing – specification to be determined. (Fire-Dex FX-A Express Turnout Coat, Brigade with Q8 Liner, or clothing of similar quality.)
 - f. 1 RF Chamber Testing – characterization of antenna embedded in gear required to qualify.
85. The cost of the equipment donated to the Department shall be no less than **FORTY-SIX THOUSAND NINE HUNDRED DOLLARS (\$46,900.00)**.
86. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is no less than \$46,900;
 - b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. 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 CAFO;
 - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
 - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - g. That Respondent 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 84, above; and
 - h. That Respondent has inquired of the SEP recipient, the Department, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Department that it is not a party to such a transaction.
87. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO from the date of its execution shall include the following language: “This project was undertaken in connection with the settlement of an administrative enforcement action taken on behalf of the U.S. Environmental Protection Agency to enforce federal laws.”
88. Respondent shall submit a SEP Completion Report to Martin Matlin (3LC32), with a copy to Natalie Katz (3RC30) U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, within thirty (30) days from completion of the SEP. The SEP Completion Report shall:
- a. Provide an inventory of the equipment donated to the Department;
 - b. Provide itemized costs:
 - i. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.
 - ii. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such.
 - iii. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.
 - c. Provide a certification. Respondent shall, by its representative officer, sign the report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

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

89. Upon receipt of the SEP Completion Report identified in Paragraph 88, above, EPA will provide written notification to the Respondent of one of the following:
- a. If the SEP Completion Report is deficient, notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;
 - b. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the project has been completed in accordance with this CAFO; or
 - c. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has not been completed in accordance with this CAFO, notify the Respondent in writing that EPA has concluded that the project has not been completed in accordance with this CAFO and grant Respondent an additional fourteen (14) calendar days to complete the SEP in accordance with this SCAFO. If the SEP is not completed within such time period, EPA may seek stipulated penalties in accordance with Paragraphs 91 through 93, below.
90. If EPA provides notification in accordance with Paragraph 89.c., above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) calendar day period, the Director of the Land and Chemicals Division for EPA, Region III, shall provide to the Respondent a written statement of her decision on the adequacy of the completion of the SEP, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 91 through 93, below.

91. In the event that Respondent fails to comply with any of the terms or conditions of this CAFO relating to the performance of the SEP, described in Paragraph 84, above, submission of the SEP Completion Report, described in Paragraph 88, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 85, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. Except as provided in subparagraph (b) below, if the SEP has not been completed in accordance with Paragraph 84, above, Respondent shall pay a stipulated penalty to EPA in the amount of **FIFTY-SEVEN THOUSAND DOLLARS (\$57,000.00)**;
 - b. If the SEP is not completed in accordance with Paragraph 84, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to complete the project; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - c. If the SEP is completed in accordance with Paragraph 84, above, and the SEP Completion Report is submitted in accordance with Paragraph 88, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)**;
 - d. If the SEP is completed in accordance with Paragraph 84, above, the SEP Completion Report is submitted in accordance with Paragraph 88, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty; and
 - e. If Respondent fails to submit the SEP Completion Report required by Paragraph 88, above, Respondent shall pay a stipulated penalty in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** for each day after the report was originally due until the report is submitted.
92. The determination of whether the SEP has been completed in accordance with Paragraph 84, above, and whether the Respondent has made a good faith, timely effort to complete the SEP shall be in the sole discretion of EPA. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.
93. Respondent shall pay stipulated penalties within fourteen (14) calendar days of receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 78 through 81, above, if Respondent fails to pay the assessed stipulated penalties within fourteen (14) calendar days of receipt of EPA's written demand.

VI. CERTIFICATIONS

94. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of the current, authorized revised MdHWMR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this Consent Agreement.

VII. OTHER APPLICABLE LAWS

95. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VIII. RESERVATION OF RIGHTS

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

IX. FULL AND FINAL SATISFACTION

97. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this Consent Agreement.

X. PARTIES BOUND

98. This CAFO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this CAFO.

XI. EFFECTIVE DATE

99. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the

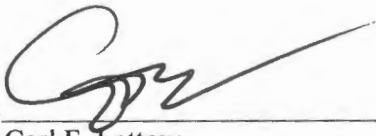
Regional Judicial Officer.

XII. ENTIRE AGREEMENT

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

For Respondent:

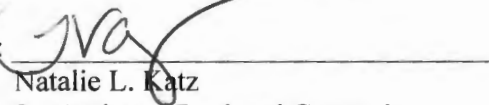
Date: MAY 19, 2017

By: 

Carl F. Lettow
Vice President and General Counsel

For the Complainant:

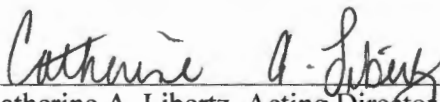
Date: 5/22/2017

U.S. Environmental Protection Agency, Region III
By: 

Natalie L. Katz
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6-2-17

By: 

Catherine A. Libertz, Acting Director
Land and Chemicals Division

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

In the matter of: :
: :
Vorbeck Materials Corp. : U.S. EPA Docket RCRA-03-2017-0133
8306 Patuxent Range Road, Unit #106 : :
Jessup, MD 20794 : :
Respondent, : Proceeding under Section 3008(a) and (g)
: of the Resource Conservation and
Vorbeck Materials Corp. : Recovery Act, as amended,
8306 Patuxent Range Road, Unit #106 : 42 U.S.C. § 6928(a) and (g)
Jessup, MD 20794 : :
Facility. : :
:

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FINAL ORDER


Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Vorbeck Materials Corp. (“Respondent”), have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. § 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) (“RCRA”), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty payment of **\$28,200.00 (TWENTY-EIGHT THOUSAND TWO HUNDRED DOLLARS)**, in accordance with the payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

June 7, 2017
Date:



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the matter of:

**Vorbeck Materials Corp.
8306 Patuxent Range Road, Unit #106
Jessup, MD 20794**

Respondent,

**Vorbeck Materials Corp.
8306 Patuxent Range Road, Unit #106
Jessup, MD 20794**

Facility.

:
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: **U.S. EPA Docket RCRA-03-2017-0133**
:
:
: **Proceeding under Section 3008(a) and (g)**
: **of the Resource Conservation and**
: **Recovery Act, as amended,**
: **42 U.S.C. § 6928(a) and (g)**
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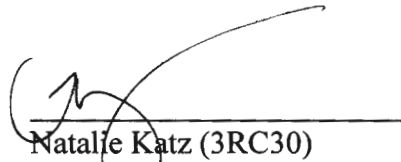
CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by UPS Next Day Delivery, a copy of the Consent Agreement and Final Order to the addressee(s) listed below:

Carl F. Lettow
Vorbeck Materials Corp.
8306 Patuxent Range Road, Unit #106
Jessup, MD 20794

The original and one copy of were hand-delivered to, and filed with, the Regional Hearing Clerk, U.S. EPA Region III.

Dated: 6/8/17



Natalie Katz (3RC30)
Senior Assistant Regional Counsel
EPA Region III
1650 Arch Street
Philadelphia, PA 19103

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