

RECEIVED

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

AUG 28 AM 9: 57
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

**Mack Trucks, Inc.
7000 Alburdis Road
Macungie, Pennsylvania 18062-9631,**

Respondent.

Docket No. RCRA-03-2014-0113

CONSENT AGREEMENT

**Proceeding under RCRA Section
3008(a)(1) and (g), 42 U.S.C.
§ 6928(a)(1) and (g)**

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Mack Trucks, Inc. ("Respondent"), pursuant to Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(1) 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.
2. The Consolidated Rules of Practice, 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 (collectively referred to herein as the "CAFO"), simultaneously commences and concludes this administrative proceeding against Respondent Mack Trucks, Inc.
3. This CAFO addresses Respondent's violations of RCRA Subtitle C, 42 U.S.C. §§ 6921-

6939f, various regulations promulgated thereunder as set forth at 40 C.F.R. Parts 260-266, 268, and 270-73, and the authorized Pennsylvania Hazardous Waste Management Regulations, 25 Pa. Code Sections 260a - 266a, 266b, and 268a – 273a (“PaHWMR”) that occurred at the Mack Trucks, Inc. facility located at 7000 Alburtis Road, Macungie, Pennsylvania 18062-9631 (“Facility”).

4. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”) were authorized by the U.S. Environmental Protection Agency (“EPA”) pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWMR subsequently were revised, and thereafter re-authorized by EPA, on September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWMR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009, respectively. The PaHWMR incorporate, with certain exceptions, federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWMR authorization, June 28, 2001 for the March 22, 2004 PaHWMR authorization, and October 12, 2005 for the April 29, 2009 PaHWMR authorization. The provisions of Pennsylvania’s current authorized PaHWMR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
5. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C and satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.
6. Respondent is, hereby, notified of EPA’s determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270-73, and the PaHWMR.
7. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PADEP”), prior notice of the commencement of this civil proceeding in accordance with RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2).

II. GENERAL PROVISIONS

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

9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
10. Respondent agrees not to contest the jurisdiction of EPA 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 a hearing on any issue of law or fact in this matter, consents to the issuance of this CAFO without adjudication, and waives its 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 and Complainant shall bear their own costs and attorney's fees in connection with this proceeding.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges the following findings of fact and conclusions of law.
15. Respondent is a Pennsylvania corporation doing business in, and with offices and an operating facility located within, the Commonwealth of Pennsylvania, and is a "person" within the meaning of RCRA Section 1004(15), 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 25 Pa. Code Section 260a.10.
16. Respondent is and has been, at all times relevant to this CAFO, the owner and operator of a facility, located at 7000 Alburdis Road in Macungie, Pennsylvania (the "Facility"), where the Respondent manufactures and assembles trucks.
17. On or about May 2, 2012, a duly authorized representative of EPA, Region III, conducted a compliance evaluation inspection ("CEI") of the Facility to assess the Respondent's compliance with the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, the federal regulations promulgated thereunder, and the PaHWMR requirements at the Facility.

COUNT I

(Operating a Hazardous Waste Storage Facility Without a Permit)

18. The allegations of Paragraphs 1 through 17 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
19. RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), and 25 Pa. Code § 270a.1,

which incorporates by reference 40 C.F.R. Part 270, provide, in pertinent part, that a person owning and/or operating a facility used for the treatment, storage or disposal of hazardous waste is required to comply with the permitting requirements established by EPA or by a state with an authorized hazardous waste management program, or have interim status for such facility.

20. At all times relevant this Consent Agreement, Respondent generated at the Facility “hazardous waste” (i.e. paint waste and solvents), as that term is defined by RCRA Section 1004(5), 42 U.S.C. § 6903(5), and 40 C.F.R. §§ 260.10 and 261.3, as incorporated by reference by 25 Pa. Code Sections 260a.1 and 261a.1. See also 25 Pa Code Section 261a.3.
21. The Facility was assigned the EPA Identification Number PAD060493582.
22. At all times relevant to this Consent Agreement, Respondent was a “generator” of hazardous waste as that term is defined by 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
23. At all times relevant to this Consent Agreement, hazardous waste was in “storage” in containers and tanks at Respondent’s “facility” as those terms are defined by RCRA Section 1004(33), 42 U.S.C. § 6903(33), and 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1, and 25 Pa. Code Section 260a.10.
24. At all times relevant to this Consent Agreement, Respondent was the “owner” and “operator” of a hazardous waste storage facility as those terms are defined by 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
25. A “container” is defined to mean “any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.” 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
26. A “tank” is defined to mean “a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.” 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
27. An “existing tank system” means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to January 16, 1993. 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1 and 260a.10.
28. At all times relevant to this Consent Agreement, Respondent never possessed a permit or interim status authorizing the treatment, storage or disposal of hazardous waste at the Facility.

29. 40 C.F.R. § 262.34(a), which is incorporated by reference by 25 Pa. Code § 262a.10, provides, in pertinent part, that a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided the generator complies with a number of conditions concerning the management of the hazardous waste, including, but not limited to:
- (1) Compliance with applicable requirements of Subparts J, AA, BB and CC of 40 C.F.R. Part 265, except §§ 265.197(c) and 265.200, with regard to the storage of hazardous waste in tanks (40 C.F.R. § 262.34(a)(1)(ii));
 - (2) Compliance with applicable requirements of Subparts I, AA, BB and CC of 40 C.F.R. Part 265, with regard to the storage of hazardous waste in containers (40 C.F.R. § 262.34(a)(1)(i), and 25 Pa. Code Section 262a.34, and Chapter 265a, Subchapter I);
 - (3) Ensuring that, with regard to the storage of hazardous waste in containers, the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container (40 C.F.R. § 262.34(a)(2));
 - (4) Ensuring that, while being accumulated on-site, each container and tank storing hazardous waste is labeled or marked clearly with the words “Hazardous Waste” (40 C.F.R. § 262.34(a)(3)); and
 - (5) Compliance with the requirements for owners or operators of Subparts C [Preparedness and Prevention] and D [Contingency Plan and Emergency Procedures] in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16 [relating to personnel training], and all applicable requirements under 40 C.F.R. Part 268. (40 C.F.R. § 262.34(a)(4)).
30. At the time of the May 2, 2012 CEI, Respondent was storing hazardous waste at the Facility in, among other things: a tank located in the basement of the cab line-building; and in a container (referred to by Respondent as a “gondola”) in the cab-line building.
31. The container identified in the preceding Paragraph of this CAFO meets the definition of a “container” as that term is defined by 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
32. Additionally, at the time of the May 2, 2012 CEI, Respondent was using equipment (referred to by Respondent as the “Transfer Station”) located outside the cab-line building, to distribute, meter and/or control the flow of hazardous waste to an above-ground 10,000 gallon hazardous waste storage tank (“AST”) located on the Facility.
33. At all times relevant to this Consent Agreement, the equipment referred to in the preceding paragraph qualified as “ancillary equipment” as that term is defined by 40

C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.

34. At the time of the May 2, 2012 CEI, Respondent did not qualify for the aforementioned 90-day permitting exemption provided by 25 Pa. Code Section 262a.10 (40 C.F.R. § 262.34) in that, as explained in more detail, below, Respondent was not in compliance with prerequisite requirements because of Respondent's:

- Storage of hazardous waste in containers that were open at a time when waste was not being added (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.173);
- Failure to comply with Subpart BB marking requirements (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.1050(b) and (c));
- Failure to comply with Subpart BB recordkeeping requirements (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.1064(g));
- Failure to comply with hazardous waste personnel training requirements (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.16(a) - (c));
- Failure to comply with hazardous waste job descriptions requirements (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.16(d)(2));
- Failure to comply with contingency plan requirements (25 Pa. Code Section 265a.1 and 40 C.F.R. §§ 265.52(d)); and
- Failure to maintain a tank certification (25 Pa. Code Section 265a.1 and 40 C.F.R. § 265.191)).

35. On or about May 2, 2012, Respondent violated RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by owning and operating a hazardous waste storage facility without a permit or interim status.

COUNT II
(Open Container)

36. The allegations of Paragraphs 1 through 35 of this Consent Agreement are incorporated by reference as though fully set forth at length.

37. 40 C.F.R. § 264.173, as incorporated by reference by 25 Pa. Code Section 264a.1, provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

38. During the May 2, 2012 CEI, Respondent had an open container holding hazardous waste (referred to by Respondent as a 'gondola') in the cab-line building of the Facility and the container was open at a time when it was not necessary to add or remove waste from the container.

39. On or about May 2, 2012, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173, by maintaining an open container holding

hazardous waste at the Facility, a gondola container in the cab-line building, at a time when it was not necessary to add or remove waste from the container.

COUNT III

(Failure to Comply with Subpart BB Marking Requirements)

40. The allegations of Paragraphs 1 through 39 of this Consent Agreement are incorporated by reference as though fully set forth at length.
41. 40 C.F.R. § 264.1050(a), (b) and (d), as incorporated by reference by 25 Pa. Code Section 264a.1, require that the owners and operators of facilities that treat, store or dispose of hazardous waste must mark each piece of covered equipment at their facilities that contains or contacts a hazardous waste with an organic concentration of at least 10 percent by weight in such a manner that it can be distinguished readily from other pieces of equipment.
42. At all times relevant to this Consent Agreement, Respondent had pieces of equipment at the Facility that contained or contacted hazardous waste with an organic concentration of at least 10 percent and were subject to the RCRA Part 264, Subpart BB marking requirements (25 Pa. Code Section 264a.1 and 40 C.F.R. § 264.1050(a), (b) and (d)), including, a series of pipes containing pumps and valves which ran from tanks at the Facility to a 10,000 gallon double-walled above-ground storage tank (“AST”) located outside the cab-line building.
43. At the time of the May 2, 2012 CEI, the series of pumps and valves, referenced above in Paragraph 41, which were subject to the RCRA Part 264, Subpart BB marking requirements of 25 Pa. Code Section 264a.1 and 40 C.F.R. § 264.1050(a), (b) and (d), were not marked in such a manner as to be readily distinguishable from other pieces of equipment at the Facility.
44. On or about May 2, 2012, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.1050(a), (b) and (d), by failing to mark the aforementioned pumps and valves, that contained or contacted a hazardous waste with an organic concentration of at least 10 percent by weight and were subject to the RCRA Part 264, Subpart BB marking requirements, in such a manner that they could be distinguished readily from other pieces of equipment at the Facility.

COUNT IV

(Failure to Comply with Subpart BB Record-Keeping Requirements - 2009)

45. The allegations of Paragraphs 1 through 44 of this Consent Agreement are incorporated by reference as though fully set forth at length.

46. 40 C.F.R. § 264.1064(g), as incorporated by reference by 25 Pa. Code Section 264a.1, requires, in relevant part, that owners and operators of facilities subject to the requirements of RCRA Part 264, Subpart BB must, as part of the operating record of a facility, maintain a log that includes the following information pertaining to each piece of equipment subject to the RCRA Part 264, Subpart BB: a list of identification numbers for covered equipment; dates of compliance tests; background levels measured during each compliance test; and the maximum instrument reading measured at the equipment for each compliance test.
47. At all times relevant to this Consent Agreement, Respondent had pieces of equipment at the Facility that were subject to the RCRA Part 264, Subpart BB record-keeping requirements (25 Pa. Code Section 264a.1 and 40 C.F.R. § 264.1064(g)), including, a series of pipes containing pumps and valves which ran from tanks at the Facility to a 10,000 gallon double-walled above-ground storage tank (“AST”) located outside the cab-line building.
48. For the time period commencing on or about January 1, 2009 and continuing through on or about December 31, 2009, the operating record of the Facility did not contain a log for aforementioned pumps and valves subject to the RCRA Part 264, Subpart BB record-keeping requirements setting forth: the identification numbers for the covered piece of equipment; and background levels measured during each compliance test.
49. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.1064(g), by failing to maintain, for the time period commencing on or about January 1, 2009 and continuing through on or about December 31, 2009, a log for each piece of equipment subject to the RCRA Part 264, Subpart BB requirements, including the aforementioned pumps and valves in a series of pipes leading to a 10,000 gallon AST at the Facility, setting forth: the identification numbers for the covered piece of equipment; and background levels measured during each compliance test.

COUNT V

(Failure to Comply with Subpart BB Record-Keeping Requirements - 2010)

50. The allegations of Paragraphs 1 through 49 of this Consent Agreement are incorporated by reference as though fully set forth at length.
51. For the time period commencing on or about January 1, 2010 and continuing through on or about December 31, 2010, the operating record of the Facility did not contain a log for each piece of equipment subject to RCRA Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered piece of equipment; and background levels measured during each compliance test.
52. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40

C.F.R. § 264.1064(g), by failing to maintain, for the time period commencing on or about January 1, 2010 and continuing through on or about December 31, 2010, a log for each piece of equipment subject to the RCRA Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered piece of equipment; and background levels measured during each compliance test.

COUNT VI

(Failure to Comply with Subpart BB Record-Keeping Requirements - 2011)

53. The allegations of Paragraphs 1 through 52 of this Consent Agreement are incorporated by reference as though fully set forth at length.
54. For the time period commencing on or about January 1, 2011 and continuing through on or about December 31, 2011, the operating record of the Facility did not contain a log for each piece of equipment subject to RCRA Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered equipment; and background levels measured during each compliance test.
55. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.1064(g), by failing to maintain, for the time period commencing on or about January 1, 2011 and continuing through on or about December 31, 2011, a log for each piece of equipment subject to the RCRA Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered equipment; and background levels measured during each compliance test.

COUNT VII

(Failure to Comply with Subpart BB Record-Keeping Requirements - 2012)

56. The allegations of Paragraphs 1 through 55 of this Consent Agreement are incorporated by reference as though fully set forth at length.
57. For the time period commencing on or about January 1, 2012 and continuing through on or about December 31, 2012, the operating record of the Facility did not contain a log for each piece of equipment subject to RCRA Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered equipment; and background levels measured during each compliance test.
58. Respondent violated by 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.1064(g), by failing to maintain, for the time period commencing on or about January 1, 2012 and continuing through on or about December 31, 2012, a log for each

piece of equipment subject to the Part 264, Subpart BB requirements, including pumps and valves in a series of pipes leading to a 10,000 AST at the Facility, setting forth: the identification numbers for the covered equipment; and background levels measured during each compliance test.

COUNT VIII

(Failure to Provide Required Hazardous Waste Personnel Training)

59. The allegations of Paragraphs 1 through 58 of this Consent Agreement are incorporated by reference as though fully set forth at length.
60. 40 C.F.R. § 264.16(a) - (c), which is incorporated by reference by 25 Pa. Code Section 264a.1, in pertinent part, requires that facility personnel must: (a) 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 40 C.F.R. Part 264; (b) complete such program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.
61. For the time period commencing on or about January 1, 2009 and continuing through on or about December 31, 2009, an emergency coordinator of Respondent's Facility failed to receive the hazardous waste personnel training required by 25 Pa. Code Section 264a.1 (40 C.F.R. § 264.16(c)).
62. For the time period commencing on or about January 1, 2010 and continuing through on or about December 31, 2010, an emergency coordinator of Respondent's Facility failed to receive the hazardous waste personnel training required by 25 Pa. Code Section 264a.1 (40 C.F.R. § 264.16(c)).
63. For the time period commencing on or about January 1, 2011 and continuing through on or about December 31, 2011, three emergency coordinators of Respondent's Facility failed to receive the hazardous waste personnel training required by 25 Pa. Code Section 264a.1 (40 C.F.R. § 264.16(c)).
64. For the time period commencing on or about January 1, 2009 and continuing through on or about December 31, 2011, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), by failing to ensure that personnel of its Facility, more specifically, emergency coordinators, receive the required annual hazardous waste personnel training review.

COUNT IX

(Failure to Provide Required Job Descriptions)

65. The allegations of Paragraphs 1 through 64 of this Consent Agreement are incorporated by reference as though fully set forth at length.

66. 40 C.F.R. § 264.16(d)(1), (2), and (3), which is incorporated by reference by 25 Pa. Code Section 264a.1, requires, in relevant part, that the owner or operator of a hazardous waste storage facility must maintain the following documents and records at the facility: the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job; a written job description for each person with hazardous waste management responsibilities; and 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 40 C.F.R. § 264.16(d)(1).
67. At the time of the May 2, 2012 CEI, the Facility's operating record did not include job descriptions for the Facility's Supervisor and Department Manager positions which fully set forth the hazardous waste management responsibilities of the positions as required by 25 Pa. Code Section 264a.1 (40 C.F.R. § 265.16(d)(2)).
68. On or about May 2, 2012, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(2), by failing to have in its Facility operating record on May 2, 2012, job descriptions for the Facility's Supervisor and Department Manager positions which fully set forth the hazardous waste management responsibilities of the positions.

COUNT X

(Failure to Comply with Contingency Plan Requirements)

69. The allegations of Paragraphs 1 through 68 of this Consent Agreement are incorporated by reference as though fully set forth at length.
70. 40 C.F.R. §§ 264.51 and .52, as incorporated by reference by 25 Pa. Code Section 264a.1, requires that each owner or operator of a hazardous waste storage facility must have a contingency plan for the facility that is designed to minimize hazards to human health or 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, and contains the information specified in 40 C.F.R. § 264.52.
71. 40 C.F.R. 264.52(d), as incorporated by reference by 25 Pa. Code Section 264a.1, requires that the contingency plan must include, among other things, a list of the "names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see [40 C.F.R.] § 264.55), and the list must be kept up to date."
72. At the time of the May 2, 2012 CEI, the Facility's Contingency Plan did not include an up-to-date listing of the names and home addresses of all persons qualified to act as emergency coordinator for the Facility, and still listed an individual, who had resigned from the Company on October 16, 2011, as a current emergency coordinator.

73. On or about May 2, 2012, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.52(d), by failing to update its Facility's Contingency Plan to accurately list, as of May 2, 2012, the names and home addresses of all persons qualified to act as emergency coordinator for the Facility.

COUNT XI

(Failure to Maintain Tank Certification)

74. The allegations of Paragraphs 1 through 73 of this Consent Agreement are incorporated by reference as though fully set forth at length.
75. 40 C.F.R. § 264.191, as incorporated by reference by 25 Pa. Code Section 264a.1, and 25 Pa. Code Section 264a.191 require, among other things, that, owners or operators of facilities using existing tank systems to store or treat hazardous waste, must first determine whether the tank system is leaking or unfit for use via a written assessment reviewed and certified by a qualified professional engineer (Tank Certification).
76. 40 C.F.R. § 264.191, as incorporated by reference by 25 Pa. Code Section 264a.1, requires that a tank system's owner or operator must obtain and keep on file at a facility a written assessment reviewed and certified by a qualified professional engineer (Tank Certification) that attests to the tank system's integrity.
77. At the time of the May 2, 2012 CEI, a tank located in the basement of the cab-line building at the Facility that was being used by Respondent to store hazardous waste was an existing tank system, as defined by 40 C.F.R. § 260.10, which is incorporated by reference by 25 Pa. Code Section 260a.1, and 25 Pa. Code Section 260a.10.
78. At the time of the May 2, 2012 CEI, Respondent did not have on file at the Facility a Tank Certification prepared by a qualified professional engineer attesting to the integrity of the tank in the basement of the cab-line building.
79. On or about May 2, 2012, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.191, and 25 Pa. Code Section 264a.191, by failing to obtain and maintain a Tank Certification prepared by a qualified professional engineer attesting to the integrity of the tank in the basement of the cab-line building of the Facility.

IV. SETTLEMENT

80. In view of EPA's Findings of Fact and Conclusions of Law, set forth above, Complainant concludes that the Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, the federal regulations promulgated thereunder, and the authorized PaHWMR.
81. In view of EPA's Findings of Fact and Conclusions of Law, set forth above, Complainant

further concludes that the Respondent is liable to the United States for a civil penalty pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).

82. Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), authorize, for violations of any requirement of RCRA Subtitle C, EPA's regulations promulgated thereunder, or any regulation of a state hazardous waste program authorized by EPA, the assessment of a civil penalty of up to \$25,000 per violation, with each day of violation constituting a separate violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008)), violations of RCRA Subtitle C, EPA's regulations promulgated thereunder, or any regulation of a state hazardous waste program authorized by EPA are subject to an increased statutory maximum penalty of \$37,500 per violation, with each day of violation constituting a separate violation.
83. In settlement of the violations alleged against Respondent in EPA's Findings of Fact and Conclusions of Law Section of this Consent Agreement, and in consideration of each provision of this CAFO, Respondent consents to the assessment of a civil penalty in the amount of FIFTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$54,800.00). 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 all parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this fully executed CAFO is mailed or hand-delivered to Respondent.
84. The aforesaid settlement amount, set forth above, is appropriate for the violations identified in this CAFO and is based on consideration of a number of factors, including, but not limited to: the statutory factors (i.e., serious of the violation and any good faith efforts to comply with applicable requirements) set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3); and the application of these criteria to the particular facts and circumstances of this case with specific reference to EPA's *RCRA Civil Penalty Policy* (October 1990 and June 2003), and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley, entitled *Adjusted Penalty Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
85. Respondent shall pay the civil penalty amount referenced above, plus any interest, administrative fees, and late payment penalties owed, 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 Docket Number of this action, *i.e.*, RCRA-03-2014-0113;
 - b. All checks shall be made payable to the "United States Treasury";

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

U.S. Environmental Protection Agency
Fines 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 for delivery to:

U.S. Environmental Protection Agency
Government Lockbox 979077
U.S. EPA, Fines & Penalties
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 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 No. = 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://www.epa2.gov/financial/makeapayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Joseph J. Lisa
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029, and

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

86. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described

below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including, interest, penalties and/or administrative costs of handling delinquent debts.

87. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
88. 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 – Case 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 additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
89. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
90. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Compliance Tasks

91. In accordance with 40 C.F.R. § 22.1(a)(4), within ninety (90) calendar days of the effective date of this CAFO, Respondent agrees to remove the ancillary equipment (referred to by Respondent as the Transfer Station) and to dispose of any contents of the equipment in accordance with all applicable federal, state and local laws and requirements.
92. Within one hundred and twenty (120) calendar days of the effective date of this CAFO, Respondent will submit to EPA Region III a written report, including, plans, specifications and photos, which document the changes that were made and the manner in which waste will be transferred from containers (referred to as gondolas by Respondent) to the 10,000 gallon AST at the Facility in the future. Additionally, the written report will certify that the ancillary equipment was removed and its contents disposed of in accordance with all applicable federal, state, and local laws and requirements. The written report shall be signed and dated by a representative of Respondent authorized to

make the submission on behalf of the respondent and shall include the following:

“I certify under penalty of law that I have personally examined and am familiar with the information in this submission and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information contained herein, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.”

Signature: _____
Printed Name: _____
Title: _____

Certification of Compliance

93. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Respondent’s Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of RCRA Subtitle C and the authorized PaHWMR.

Other Applicable Laws

94. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

95. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil penalties for the specific violations of RCRA Subtitle C and the authorized PaHWMR alleged herein. EPA reserves the right to commence action against any person, including 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, federal regulations or authorized state regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

96. This Settlement shall constitute full and final satisfaction of all civil claims for penalties

which Complainant may have pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the specific violations alleged in this Consent Agreement. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

97. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

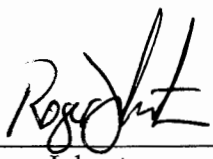
98. The effective date of this Consent Agreement and the accompanying Final Order is the dated on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

99. This Consent agreement and the accompanying Final Order constitute the entire agreement and understanding between the parties regarding settlement of all claims pertaining to the specific violations alleged herein 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: 30 June 2014

By: 
Roger Johnston
Vice President and General Manager
Macungie Cab and Vehicle Assembly Plant
Mack Trucks, Inc.

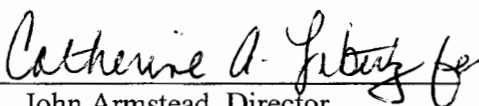
For Complainant:

Date: 7-10-2014

By: 
Joseph J. Lisa
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 8-13-14

By: 
John Armstead, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Mack Trucks, Inc.
7000 Alburdis Road
Macungie, Pennsylvania 18062-9631,**

Respondent.

Docket No. RCRA-03-2014-0113

FINAL ORDER

**Proceeding under RCRA Section
3008(a)(1) and (g), 42 U.S.C.
§ 6928(a)(1) and (g)**

FINAL ORDER

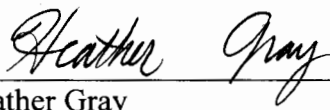
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Mack Trucks, Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.1(a)(4), 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's RCRA Civil Penalty Policy (October 1990 and June 2003), and the statutory factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3).

NOW, THEREFORE, PURSUANT TO Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(1) and (g), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FIFTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$54,800.00)**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of U.S EPA Region III or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 8-26-14



Heather Gray
Regional Judicial Officer
U.S. EPA, Region III