

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

In the Matter of:	:	
	:	
TNEMEC Company, Inc. 2300 Edgewater Avenue Baltimore, MD 21222	:	U.S. EPA Docket No. RCRA-03-2022-0002
	:	
Respondent.	:	Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)
	:	
TNEMEC Company, Inc. 2300 Edgewater Avenue Baltimore, MD 21222	:	
	:	
Facility.	:	
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and TNEMEC Company, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), as amended, 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. Section 3008(a) of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil monetary penalty against any person who violates 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. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted the State of Maryland final authorization to administer its hazardous waste management program regulations (“MdHWMR”) 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. Through this final authorization, the provisions of the MdHWMR became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA authorized revisions to the Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 effective on July 31, 2001, September 24, 2004, and on October 31, 2016, and, accordingly, the provisions of the revised MdHWMR are enforceable by EPA on and after those dates pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a). Maryland has not sought authorization to implement the federal air monitoring RCRA regulations, commonly known as RCRA Subparts AA, BB, and CC. EPA promulgates the regulations in Subpart AA, BB and CC pursuant to the 1984 Hazardous and Solid Waste Amendments, and those federal regulations apply in Maryland.
6. On June 23, 2020, EPA sent a letter to the State of Maryland, through the Maryland Department of the Environment (“MDE”), giving prior notice of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

GENERAL PROVISIONS

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
8. Except as provided in Paragraph 6 and 7, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
9. 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 Consent Agreement and Final Order.

10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
11. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
12. The parties shall bear their own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. 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 and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Respondent's facility is located at 2300 Edgewater Avenue, Baltimore, Maryland 21222 ("Facility"). At the Facility, Respondent manufactures commercial and industrial paint coatings. At the time of the Inspection, Respondent did not have a RCRA permit or interim status to treat, store and/or dispose of hazardous waste.
15. Respondent is a Corporation organized under the laws of the Commonwealth of Missouri.
16. 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 26.13.01.03.B(61).
17. At all times relevant to the allegations set forth in this Consent Agreement, 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 Consent Agreement.
18. At all times relevant to the allegations set forth in this Consent Agreement, and as described below, Respondent was, 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).
19. At all times relevant to the allegations set forth in this Consent Agreement, Respondent's Facility was a hazardous waste storage "facility" as that term is defined in COMAR 26.13.01.03.B(23).
20. On August 28-29, 2019, two duly-authorized representatives of EPA ("EPA Inspectors") 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.

21. On the basis of EPA's findings during the Inspection, and other information Respondent provided to EPA, 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

(Failure to Make a Hazardous Waste Determination as Required by COMAR 26.13.03.02.A)

22. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
23. COMAR 26.13.03.02.A requires that persons who generate solid waste, as defined in COMAR 26.13.02.02, shall determine if that waste is hazardous prior to disposal.
24. During the Inspection, Respondent's representative stated that some of the spent aerosol cans generated at the Facility were disposed of in the regular trash without making a hazardous waste determination prior to disposal.
25. By failing to make waste determinations for the spent aerosol cans generated at the Facility before disposal, Respondent violated COMAR 26.13.03.02.A and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count II

(Operating Without a Permit or Interim Status as Required by COMAR 26.13.07.01 & 26.13.03.05E)

26. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
27. COMAR 26.13.07.01A and Section 3005(a) & (e) of RCRA, 42 U.S.C. § 6925(a) & (e), 40 C.F.R. §§ 262 & 270 require, with certain exceptions not relevant here, that no person who owns or operates a facility for the treatment, storage or disposal of hazardous waste may do so without first obtaining a permit or interim status for the treatment, storage or disposal of hazardous waste.
28. COMAR 26.13.07.23 provides, in pertinent part, that any person who owns or operates a facility required to have a permit under COMAR 26.13.06.01, and has applied for a permit under COMAR 26.13.01.03B, shall be treated as having been issued such a permit

(i.e., “interim status”) until such time as final administrative disposition of such application is made so long as they comply with COMAR 26.13.07.01B.

29. Respondent has never had “interim status” pursuant to RCRA § 3005(e) and COMAR 26.13.07.23 or a permit issued pursuant to RCRA § 3005(a) and COMAR 26.13.07.01 for the treatment, storage or disposal of hazardous waste at the Facility.

30. Pursuant to COMAR 26.13.03.05.E(1), large quantity generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:

- a. Pursuant to COMAR 26.13.03.05.E(1)(d), the generator must comply with the requirements of COMAR 26.13.05.09.D and keep containers holding hazardous waste closed during storage, except when necessary to add or remove waste.
- b. Pursuant to COMAR 26.13.03.05.E(1)(g), which in turn references COMAR 26.13.05.04.C(6), the generator is required to maintain a contingency plan and include in that plan an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary.
- c. Pursuant to COMAR 26.13.03.05.E(1)(g), which in turn references COMAR 26.13.05.03.B, the generator must design, construct, maintain, and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
- d. Pursuant to COMAR 26.13.03.05E(1)(i), which in turn references COMAR 26.13.05.10.D, the owner or operator must:

D. Inspections. The owner or operator shall:

* * *

(2) Inspect at least once each operating day:

(a) Data gathered from monitoring and leak detection equipment, such as pressure and temperature gauges and monitoring wells, to ensure that the tank system is being operated according to its design,

* * *

(c) Above-ground portions of the tank system to detect corrosion or releases of waste, and

* * *

(5) Document, in the operating record of the facility, inspections of the items required to be made in §D(1)—(4) of this regulation.

- e. Pursuant to COMAR 26.13.03.05E(1)(k), a generator must maintain an inspection log or summary in accordance with the following, among others:
 - (ii) The log or summary includes the date and time of each inspection [...].
- 31. At the time of the Inspection, the Facility had an open cardboard container of used fluorescent lamps in the Rework Area. It was not closed, as required by COMAR 26.13.05.09.D, and waste was not being added to nor removed from the container. There was also one used lamp stored on the floor of the Rework Area.
- 32. At the time of the Inspection, the Facility's Contingency Plan did not include evacuation routes in case of an emergency, which is required by COMAR 26.13.05.04C(6).
- 33. At the time of the Inspection, EPA observed the TW002 cleaning solvent holding tank overflow, in violation of the requirement to maintain, and operate the facility to minimize the possibility of a release of hazardous waste.
- 34. At the time of the Inspection, the Facility had only conducted weekly inspections of Tank 14 from January 3, 2019 to August 30, 2019, not daily inspections as required by COMAR 26.13.05.10.D(2).
- 35. At the time of the Inspection, the Facility only documented weekly inspections of Tank 14 from July 2, 2018 through December 28, 2018, not daily as required by COMAR 26.13.05.10.D(5). The Facility did not include the time of the inspection in the records, as required by COMAR 26.13.05.02.F(4), until September 2019.
- 36. At the time of the Inspection, a container of waste lamps dated 8/14/2015 was observed in the rework area.
- 37. From November 2016 to on or about August 28, 2019, by failing to comply with the COMAR 26.13.03.05.E permit exemption requirement, Respondent did not qualify for the permit exemption, and engaged in the storage of hazardous waste without a permit. Therefore, Respondent violated COMAR 26.13.07.01.A and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count III

(Failure to Keep Containers of Hazardous Waste Closed as Required by COMAR 26.13.05.09.D)

- 38. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
- 39. COMAR 26.13.05.09.D states:
 - D. Management of Containers. A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste, and

the container may not be opened, handled, or stored in a manner which may rupture the container and cause it to leak.

40. EPA observed open containers of hazardous waste at the Facility as follows:
- (a) One open container (cardboard box) of used fluorescent lamps in the Rework Area. Waste was not being added nor removed from the container.
 - (b) One used lamp stored without a container on the floor of the Rework Area.
41. By failing to keep hazardous waste containers closed, Respondent violated COMAR 26.13.05.09.D and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count IV
(Failure to Maintain Adequate Contingency Plan as Required by COMAR 26.13.05.04.C(6))

42. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
43. Failure to have an adequate contingency plan is an independent violation of COMAR 26.13.05.04.C(6), which states:

C. Content of Contingency Plan

* * *

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signals to be used to begin evacuation, evacuation routes and alternative evacuation routes (when the primary routes could be blocked by releases of hazardous waste or fires).

44. At the time of the Inspection, the Facility's contingency plan did not include evacuation routes in case of emergency.
45. By failing to include evacuation routes, Respondent violated the Contingency Plan requirement of COMAR 26.13.05.04.C(6), which requires the Facility to prepare an adequate contingency plan, and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count V
(Failure to Maintain Facility to Minimize the Possibility of a Release as Required by COMAR 26.13.05.03.B)

46. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.

47. COMAR 26.13.05.03.B states:

B. Design and Operation of Facility. Facilities shall be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

48. EPA observed a cleaning solvent holding tank (Tank TW002) overflow from the top of the tank, which caused used cleaning solvent to spill onto the floor. The spilled material was promptly cleaned up.

49. By failing to prevent the overflow of Tank TW002 during a routine process, Respondent violated COMAR 26.13.05.03.B and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count VI

(Failure to Inspect Hazardous Waste Tank Daily as Required by COMAR 26.13.05.10.D(2))

50. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.

51. COMAR 26.13.05.10.D(2) states (in pertinent part):

D. Inspections. The owner or operator shall:

* * *

(2) Inspect at least once each operating day:

(a) Data gathered from monitoring and leak detection equipment, such as pressure and temperature gauges and monitoring wells, to ensure that the tank system is being operated according to its design,

* * *

(c) Above-ground portions of the tank system to detect corrosion or releases of waste, and

* * *

52. According to the Facility's records, from January 3, 2019 until August 30, 2019 the Facility conducted Tank 14 inspections on a weekly basis.

53. By failing to inspect Tank 14 daily, Respondent violated COMAR 26.13.05.10.D(2) and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count VII
(Failure to Document Hazardous Waste Tank Daily Inspections as Required by COMAR 26.13.05.10.D(5) and COMAR 26.13.05.02.F(4))

54. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
55. COMAR 26.13.05.10.D(5) states:
- D. Inspections. The owner or operator shall:
- * * *
- (5) Document, in the operating record of the facility, inspections of the items required to be made in §D(1)—(4) of this regulation.
56. COMAR 26.13.05.02.F(4) requires the Facility to record the date and time of required inspections.
57. According to the Facility’s records, from July 2, 2018 through December 28, 2018 the Facility documented weekly Tank 14 inspections. However, the records did not include the time of inspection.
58. Information provided by the Respondent stated that daily visual inspections were conducted of Tank 14 between July 2, 2018 and December 28, 2018, but records of these visual inspections were not maintained by the Facility.
59. By failing to document the daily hazardous waste inspections and failing to include the time of the inspections, Respondent violated COMAR 26.13.05.10.D(5) and COMAR 26.13.05.02.F(4) and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count VIII
(Failure to Conduct Monthly Monitoring for Subpart BB Equipment as Required by 40 C.F.R. §§ 264.1052(a)(1) & 264.1057(a))

60. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
61. 40 CFR §§ 264.1052(a)(1) & 264.1057(a) require facilities to monitor pumps and valves in light liquid service monthly to check for leaks using the methods specified in § 264.1063(b).
62. From July 2018 through the date of the Inspection, Tank 14 contained or came into contact with hazardous wastes with organic concentrations of at least 10 percent by weight (“light liquid”). The Facility had not monitored any of the equipment (at least one

valve and one pump) associated with Tank 14 monthly as Subpart BB equipment from July 2, 2018 through December 28, 2018 and from January 3, 2019 through August 30, 2019.

63. By failing to conduct monthly monitoring for Subpart BB equipment from July 2, 2018 through December 28, 2018 and from January 3, 2019 through August 30, 2019, Respondent violated 40 C.F.R. §§ 264.1052(a)(1) & 264.1057(a) and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count IX

(Failure to Mark Equipment Subject to Subpart BB as Required by 40 C.F.R. § 264.1050(d))

64. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
65. 40 C.F.R. § 264.1050 applies to equipment that contains or contacts hazardous wastes that have organic concentrations of at least 10 percent by weight (“light liquid”). 40 C.F.R. § 264.1050(d) states:
- Each piece of equipment to which this subpart applies shall be marked in such a matter that it can be distinguished readily from other pieces of equipment.
66. At the time of the Inspection, equipment associated with Tank 14 that came into contact with “light liquid” was not marked in a distinguishing way.
67. By failing to mark equipment subject to Subpart BB, Respondent violated 40 C.F.R. § 264.1050(d) and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

CIVIL PENALTY

68. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of EIGHTY SEVEN THOUSAND THREE HUNDRED FORTY DOLLARS (\$87,340.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
69. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including, the following: 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), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

70. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2022-0002;
- 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 and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously, by email, to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
nast.jeffrey@epa.gov

Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
R3_Hearing_Clerk@epa.gov

71. 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 of the penalty as

specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

72. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
73. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
74. ADMINISTRATIVE COSTS: The costs of the EPA'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 an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
75. LATE PAYMENT PENALTY: 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).
76. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

77. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

78. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete, (or was subsequently disclosed by Respondent not to be accurate and accurate information was supplied), and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

79. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

80. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

81. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

82. This Consent Agreement and 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 Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

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

ENTIRE AGREEMENT

84. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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 Consent Agreement and Final Order.

In re: TNEMEC Company, Inc.

EPA Docket No. RCRA-03-2022-0002

For Respondent: TNEMEC COMPANY, INC.

Date: 12/8/21

By: 
Kyle Frakes, Director of Technical & Regulatory
Affairs

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance Assurance
Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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

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	: Resource Conservation and Recovery Act, as
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FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, TNEMEC Company, 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 22.13(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 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 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), and again on May 6, 2020, and the statutory factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g).

NOW, WHEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **EIGHTY SEVEN THOUSAND THREE HUNDRED FORTY DOLLARS (\$87,340.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

Date: _____

By: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III