



3. 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. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR") 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 PaHWR subsequently were revised, and thereafter re-authorized by EPA, on September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009 respectively. The PaHWR 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 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization, and October 12, 2005 for the April 29, 2009 PaHWR authorization. The provisions of Pennsylvania's current authorized revised PaHWR, 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 § 3008(a), 42 U.S.C. § 6928(a).
4. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at Respondent's formerly-owned facility which is located at Post Road, Trainer, PA 19061.
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated June 19, 2012, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP"), 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**

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
7. EPA and Respondent expressly acknowledge that the provisions of Paragraph 6 shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an

admission that may be relied upon for any purpose by any person not a party to this proceeding.

8. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 6, above.
9. 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 the CAFO.
10. For the 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.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. 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:
14. Respondent is a Delaware corporation.
15. Respondent is, 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. Section 6903(15), 40 C.F.R. § 260.10 and 25 Pa. Code § 260a.10.
16. Respondent, or its corporate predecessor, ConocoPhillips Company, was, at all times relevant to the allegations set forth in this CAFO, the "owner" and "operator" of a "facility" located at 4104 Post Road, Trainer, Pennsylvania 19061 (hereinafter, the "Facility"), as these terms are defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10. Prior activities or conditions that occurred at the Facility during ownership and operation by either Phillips 66 Company, or its corporate predecessor, ConocoPhillips Company, will collectively be described as activities or conditions attributable to "Respondent."
17. As described below, Respondent was, at all times relevant to this CAFO, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

18. At all times relevant to this CAFO, and as described below, Respondent was engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” at the Facility, as the term “storage” is defined in 25 Pa. Code Section 260a.10, and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
19. At all times relevant to this CAFO, and as described below, Respondent has engaged in the “disposal” of “solid waste” and “hazardous waste” as the term “disposal” is defined in 25 Pa. Code Section 260a.10 and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
20. Respondent’s Facility was, at all times relevant to the allegations set forth in this CAFO, a hazardous waste storage and disposal “facility” as that term is defined in 40 C.F.R. § 260.10 and 25 Pa. Code Section 260a.10.
21. Respondent submitted to EPA a Notification of Hazardous Waste Activity (“Notification”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which include operation as a large quantity generator of hazardous waste.
22. Representatives of EPA inspected the Facility on August 1st and 2nd, 2011, and again on January 25, 2012, to examine the Facility’s compliance with the federally-authorized PaHWR requirements. EPA prepared reports summarizing its observations and findings from each inspection of the Facility (collectively, the “EPA Inspection Reports”).
23. On March 8, 2012, EPA issued a formal information request letter to Respondent, pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), and sent a second request by email on June 27, 2012. Phillips responded to these requests on March 28, 2012, April 26, 2012, May 25, 2012 and July 17, 2012.
24. On July 25, 2011, EPA sent a Request for Further Information and Opportunity to Show Cause letter (“Show Cause letter”) to Respondent advising it of EPA’s preliminary findings of PaHWR 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 PaHWR compliance at the Facility. Respondent provided additional information in response to the Show Cause letter.
25. On the basis of the Facility inspections and a review of the supplemental information provided to EPA by Respondent in response to EPA’s information requests, Show Cause letter, and other correspondence, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

### **Permit Requirements**

26. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, 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.
27. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage or disposal of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

### **Permit Exemption Conditions - Accumulation Time/Requirements**

28. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste in containers on-site for 90 days or less 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. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart I;
  - b. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container; and
  - c. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste".

### **Regulatory Permit Exemption Conditions - Management of Containers**

29. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I, including the provision of 40 C.F.R. § 265.173(a), which requires that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

**Regulatory Permit Exemption Conditions – Management of Universal Waste**

30. Except with exceptions not relevant here, 25 Pa. Code § 266b.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 273, pertaining to the management of “universal waste” set forth in the Universal Waste Management requirements of Chapter 266b of the PaHWR.
31. 40 C.F.R. § 273.1(b), as incorporated by reference in 25 Pa. Code § 266b.1, specifies that Part 273 provides an alternative set of management standards in lieu of regulation under 40 C.F.R. Parts 260 through 272 for universal waste.
32. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “Universal Waste” as including, *inter alia*, “batteries” as described in 40 C.F.R. § 273.2 and “lamps” as described in 40 C.F.R. § 273.5.
33. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “battery” as “a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store and deliver electric energy.”
34. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “lamp” as “the bulb or bulb portion of an electric lighting device. A lamp is specifically designed to produce radiant energy....Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.”
35. 40 C.F.R. § 273.2, as incorporated by reference in 25 Pa. Code § 266b.1, specifies that batteries are covered under 40 C.F.R. Part 273 except for spent acid batteries, batteries that are not yet wastes under 40 C.F.R. Part 261, and batteries that are not hazardous waste.
36. 40 C.F.R. § 273.5, as incorporated by reference in 25 Pa. Code § 266b.1, specifies that lamps are covered under 40 C.F.R. Part 273 except for lamps that are not yet wastes under 40 C.F.R. Part 261, and lamps that are not hazardous waste.
37. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines a “Small Quantity Handler of Universal Waste” as one who does not accumulate 5,000 kilograms or more of universal wastes at any time.

**COUNT I**  
***(Operating Without a Permit)***

38. The allegations of Paragraphs 1 through 37, above, of this Consent Agreement are incorporated herein by reference.

39. At all times relevant to this CA, Respondent has been the “owner” and “operator” of a “facility” (i.e., the Facility), where the Respondent engaged in hazardous waste management activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
40. At all times relevant to this CA, Respondent was the “generator” of “hazardous waste,” as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, having EPA Hazardous Waste Numbers that include, but which are not necessarily limited to, D001, F037, F038, K049, K050, and K051, as specified in 40 C.F.R. §§ 261.24, 261.31 and 261.32 and incorporated by reference in 25 Pa. Code § 261a.1.
41. At all times relevant to this CA, Respondent engaged in the “storage,” as that term is defined in 25 Pa. Code § 260a.10, of “hazardous waste” in “container[s]” as those terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, at the Facility. At the time of the EPA inspection, EPA inspectors observed the following containers of hazardous waste at the Facility:
- a. API separator sludge [F037, F038, K049, K050 and K051 listed wastes], stored in a large, blue portable container, of approximately 20,000 gallons capacity. The sludge is held in this container and conditioned prior to pressing.
  - b. API separator sludge [F037, F038, K049, K050 and K051 listed wastes], in the form of backhoe rinse water, stored in a yellow dumpster.
  - c. An orphan drum that appeared to have been used for puncturing and draining hazardous waste aerosol cans [Waste Code D001]. This drum was open, because the filter was missing from the smaller bung hole. The drum was located in an open space near the alky field, and not at or near the point of hazardous waste generation.
42. On August 1 and 2, 2011, Respondent was storing at the Facility a yellow metal dumpster, which contained hazardous waste consisting of backhoe rinse water. This container was not marked with the words “Hazardous Waste,” and did not have a clearly marked accumulation of hazardous waste date visible, as required pursuant to 25 Pa. Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(2) and (3).
43. On August 1 and 2, 2011, Respondent was storing at the Facility an orphan drum, used for puncturing and draining hazardous waste aerosol cans. This container was being used as a satellite container, but was not kept at or near point of generation, as required by 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1).

44. On August 1 and 2, 2011, Respondent was storing, in the container described immediately above, waste generated when puncturing and draining hazardous waste aerosol cans. The container was not closed at a time when it was not necessary to add or remove hazardous waste from the container, as required pursuant to the requirements of 25 Pa. Code Section 262a.10, which incorporate by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i), which in turn incorporates 40 C.F.R. § 265.173(a).
45. On January 25, 2012, Respondent was storing a large blue portable container, described in Paragraph 41.a., above, which contained hazardous waste, consisting of wastewater treatment sludge. This container was not marked with the words "Hazardous Waste," and did not have a clearly marked accumulation of hazardous waste date visible, as required pursuant to 25 Pa. Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(2) and (3).
46. For each of the reasons and during each of the times set forth in Paragraphs 42 through 45, above, Respondent failed to comply with the conditions for the temporary storage (*i.e.*, 90 days or less) of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a) and (c), as incorporated by reference in 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
47. On August 1 and 2, 2011, and January 25, 2012, Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by storing hazardous waste at the Facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

## **COUNT II**

### ***(Failure to Keep Containers of Hazardous Waste Closed During Storage)***

48. The allegations of Paragraphs 1 through 47, above, are incorporated herein by reference as though fully set forth at length.
49. 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."
50. On August 1 and 2, 2011, Respondent stored hazardous waste, consisting of backhoe rinse water, in the yellow dumpster previously identified in Paragraphs 41 and 42, above, that was not kept closed at times when it was not necessary to add or remove waste.



51. On August 1 and 2, 2011, Respondent stored waste generated when puncturing and draining hazardous waste aerosol cans, in orphan drum previously identified in Paragraphs 43 and 44, above, that was not kept closed at times when it was not necessary to add or remove waste.
52. On August 1 and 2, 2011, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding hazardous waste in containers that were not kept closed during storage, when it was not necessary to add or remove waste.

**COUNT III**  
***(Failure to Update Contingency Plan)***

53. The allegations of Paragraphs 1 through 52, above, are incorporated herein by reference as though fully set forth at length.
54. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.54(d), provides that the Facility's contingency plan must be reviewed and immediately updated when the list of emergency coordinators changes.
55. During the August 2011 and January 2012 inspections, EPA inspectors observed that the Facility's emergency coordinators changed, but Respondent failed to immediately update the Facility's contingency plan to reflect the change in emergency coordinators.
56. Respondent's response letter, dated March 28, 2012, confirmed that three emergency coordinators at the Facility discontinued serving in that position in November 2010, March 2011 and May 2011. However, at the time of EPA's inspections, Respondent was using its Contingency Plan, dated October 4, 2010, with these individuals still listed as emergency coordinators.
57. On August 1 and 2, 2011, and January 25, 2012, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.54(d), by failing to immediately update the list of Facility emergency coordinators in its Contingency Plan.

**COUNT IV**  
***(Failure to Maintain Hazardous Waste Management  
Personnel Designations and Job Descriptions)***

58. The allegations of Paragraphs 1 through 57, above, are incorporated herein by reference as though fully set forth at length.
59. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), provides that the owner or operator of a facility must maintain certain documents at the

facility, including a list of job titles related to hazardous waste management, and a written job description for each position with duties specifically related to hazardous waste management.

60. During the August 2011 inspection, EPA inspectors observed that Respondent failed to maintain a list of job titles related to hazardous waste management, in violation of 40 C.F.R. § 264.16(d)(1), and failed to have a written job description for each position related to hazardous waste management, in violation of 40 C.F.R. § 264.16(d)(2).
61. At the time of the August 2012 EPA inspection, the job descriptions for employees engaged in hazardous waste management at the Facility failed to list the specific employee duties related to hazardous waste management.
62. On August 1 and 2, 2011, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), by failing to maintain a list of job titles related to hazardous waste management, and failing to maintain job descriptions that list employee duties related to hazardous waste management.

#### **COUNT V**

#### ***(Failure to Comply with Universal Waste Labeling/Marking Requirements for Batteries)***

63. The allegations of Paragraphs 1 through 62, above, are incorporated herein by reference as though fully set forth at length.
64. 25 Pa. Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part 273, Subpart B, including the “Standards for Small Quantity Handlers of Universal Waste.”
65. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), requires that, for small quantity generators of universal waste batteries, each universal waste battery or container of such batteries, must be labeled or marked clearly with one of the following phrases: “Universal Waste-Battery(ies)” or “Waste Battery(ies)” or “Used Battery(ies).”
66. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated. This demonstration may be performed by marking or labeling the waste or the container with the earliest date that the universal waste became a waste or was received; maintaining an inventory system on-site that identifies the earliest date that any universal waste became a waste or was received; placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or by any other method which clearly demonstrates the

length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

67. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste batteries at the Facility.
68. On August 1 and 2, 2011, Respondent was accumulating eight containers of universal waste batteries at the Facility which were not labeled or marked with any one of the applicable and required phrases (i.e., "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)").
69. On August 1 and 2, 2011, Respondent was accumulating eight containers of universal waste batteries at the Facility which were not labeled or marked with the dates that the accumulation of universal waste batteries began.
70. On August 1 and 2, 2011, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.14(a), by failing to properly label or mark eight containers of universal waste batteries at the Facility.
71. On August 1 and 2, 2011, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), by failing to properly label or mark eight containers of batteries at the Facility with the dates of accumulation of waste batteries began, or otherwise have a system for demonstrating the length of time that the waste had been accumulating.

#### **COUNT VI**

#### ***(Failure to Comply with Universal Waste Labeling/Marking Requirements for Lamps)***

72. The allegations of Paragraphs 1 through 71, above, are incorporated herein by reference as though fully set forth at length.
73. 25 Pa. Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part 273, including the "Standards for Small Quantity Handlers of Universal Waste" which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the 40 C.F.R. Part 273 requirements governing universal waste lamp labeling/marketing requirements.
74. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), requires, among other things, that a small quantity handler of universal hazardous waste, specifically, universal waste "lamps," contain such lamps in structurally-sound containers or packages that remain closed and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

75. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires that each lamp, or container or package containing such lamps, must be clearly marked or labeled with one of the following phrases: “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamp(s).”
76. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated. This demonstration may be performed by marking or labeling the waste or the container with the earliest date that the universal waste became a waste or was received; maintaining an inventory system on-site that identifies the earliest date that any universal waste became a waste or was received; placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or by any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
77. During the August 2011 inspection, EPA inspectors observed:
- a. Respondent was storing 19 boxes of universal waste lamps (bulbs) at the Facility, and that most of these boxes were open, with no visible labels or dates that accumulation began.
  - b. There were approximately 125 loose lamps stored in a shed at the Facility, some of which were broken. There were no labels or dates on these lamps.
  - c. There were two drums at the Facility marked as containing sodium lamps, and the top of one of the drums was not secured.
78. During the January 2012 inspection, EPA inspectors observed:
- a. Respondent was storing five boxes of universal waste lamps in a shed at the Facility, and one box was not closed.
  - b. Respondent failed to label its boxes of waste lamp boxes with the dates that accumulation began.
79. On August 1 and 2, 2011, and January 25, 2012, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by failing to store universal waste lamps in closed containers.
80. On August 1 and 2, 2011, and January 25, 2012, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.14(e) and 273.15(c), by failing to label its containers of used lamps with their contents and dates that

accumulation began, or otherwise have a system for demonstrating the length of time that the waste had been accumulating.

#### **IV. CIVIL PENALTIES**

81. Respondent agrees to pay a civil penalty in the amount of **Fifty Thousand Dollars (\$50,000.00)**, in full and final settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations and facts alleged and set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of the CAFO. 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 a copy of this CAFO is mailed or hand-delivered to Respondent.
82. The civil penalty settlement amount set forth in Paragraph 81, 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 Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* (“Kelley Memorandum”).
83. Payment of the civil penalty set forth in Paragraph 81, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 84 through 88, below, shall be made by either cashier’s check, certified check, or electronic wire transfer, in the following manner:
  - a. All payments by Respondents shall reference Respondent’s name and address, and the EPA Docket Number of this Consent Agreement, *i.e.*, RCRA-03-2013-0053;
  - 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  
Fines and Penalties

Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Customer service contact: 513-487-2105

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: 314-418-1028

- 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

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

g. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

84. 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.

85. 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.

86. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order 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).

87. 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.
88. 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).
89. 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. CERTIFICATIONS**

90. 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 PaHWR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this Consent Agreement.

#### **VI. OTHER APPLICABLE LAWS**

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

#### **VII. RESERVATION OF RIGHTS**

92. 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.

**VIII. FULL AND FINAL SATISFACTION**

93. 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.

**IX. PARTIES BOUND**

94. This Consent Agreement and the accompanying Final Order 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 Consent Agreement and the accompanying Final Order.

**X. EFFECTIVE DATE**

95. 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.

**XI. ENTIRE AGREEMENT**

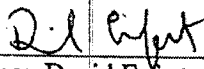
96. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Phillips 66 Company:

Date: 12/12/12

By:

  
Name: David Erfert  
Title: Refinery Manager

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 12/12/2012

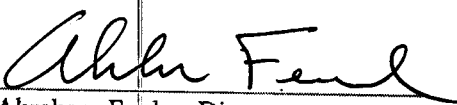
By:

  
Natalie L. Katz  
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, 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: 12/14/12

By:

  
Abraham Ferdas, Director  
Land and Chemicals Division

For Respondent:

Phillips 66 Company:

Date: 12/12/17

By: *David Erfert*  
Name: David Erfert  
Title: Refinery Manager

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Natalie L. Katz  
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, 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: \_\_\_\_\_

By: \_\_\_\_\_  
Abraham Ferdas, Director  
Land and Chemicals Division

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

**In the matter of:** )  
) )  
**Phillips 66 Company** )  
**3010 Briarpart Drive** )  
**Houston, TX 77042** )  
) )  
**RESPONDENT.** )  
) )  
**Phillips 66 Company/ConocoPhillips** )  
**Former Trainer Refinery** )  
**4104 Post Road** )  
**Trainer, PA 19061** )  
) )  
**FACILITY.** )

**Docket No. RCRA-03-2013-005**

**Proceeding Under Section**  
**3008(a) and (g) of the**  
**Resource Conservation and**  
**Recovery Act, as amended,**  
**42 U.S.C. § 6928(a) and (g)**

**REGIONAL HEARING CLERK**  
**EPA REGION III, PHILA. PA**

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**FINAL ORDER**

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Phillips 66 Company, 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty payment of **Fifty Thousand Dollars (\$50,000.00)**, as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

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

1/10/13  
Date:

Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

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

In the matter of: )  
 )  
 Phillips 66 Company )  
 3010 Briarpark Drive )  
 Houston, TX 77042 )  
 )  
 RESPONDENT. )  
 )  
 Phillips 66 Company/ConocoPhillips )  
 Former Trainer Refinery )  
 4104 Post Road )  
 Trainer, PA 19061 )  
 )  
 FACILITY. )

Docket No. RCRA-03-2013-0053

Proceeding Under Section  
 3008(a) and (g) of the  
 Resource Conservation and  
 Recovery Act, as amended,  
 42 U.S.C. § 6928(a) and (g)

REGIONAL HEARING CLERK  
 EPA REGION III, PHILA. PA

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RECEIVED


CERTIFICATE OF SERVICE

I hereby certify that on 1/10/13, I filed and served copies of the attached Consent Agreement and Final Order, as follows:

Original and One Copy filed: (via hand delivery) Lydia Guy (3RC00)  
 Regional Hearing Clerk  
 U.S. Environmental Protection Agency  
 Region III  
 1650 Arch Street  
 Philadelphia, PA 19103

Copy to: (via Overnight Mail) Linda Hester, Esquire  
 Phillips 66 Company  
 3010 Briarpark Drive  
 Houston, TX 77042

Bart Cassidy  
 Manko, Gold, Katcher &  
 Fox, LLP  
 401 City Avenue, Suite 500  
 Bala Cynwyd, PA 19004

Date:   
 Natalie L. Katz  
 Senior Assistant Regional Counsel  
 EPA, Region III