

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

In the Matter of:

Apex Tool Group, LLC

Respondent.

Apex Tool Group, LLC
3990 E. Market Street
York, Pennsylvania, 17402,

Facility.

U.S. EPA-REGION 3-RHC
FILED-6FEB2019pm2:53

EPA Docket No. RCRA-03-2019-0036

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

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Apex Tool Group, LLC (“Respondent”) pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. This Consent Agreement and the accompanying Final Order (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a.

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 authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939 (g). Effective January 30, 1986, the PaHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed.Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See 25 Pa. Code § 260a.3(e)*.
4. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) - (3) of the Consolidated Rules of Practice, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent by the issuance of a Consent Agreement and Final Order, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a), to resolve alleged violations of RCRA at Respondent’s facility located at 3990 E. Market Street, York, Pennsylvania, 17402.
5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA’s jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

11. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated July 18, 2018, 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.

12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), RCRA Section 3008(a)(1), 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.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the State of Delaware.
14. Respondent is, and at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 25 Pa. Code § 260a.10.
15. Respondent is, and at all times relevant to this Consent Agreement, was the “owner” and “operator” of a “facility”, described in Paragraph 16, below, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
16. The facility referred to in Paragraph 15, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a manufacturing facility located at 3990 E. Market Street, York, Pennsylvania, 17402.
17. Respondent was at all times relevant to this CAFO, a large quantity generator of hazardous waste that generated more than 1,000 kilograms of hazardous waste per month at its Facility. Respondent is assigned EPA ID No. PAD003014560.
18. Respondent was at all times relevant to this CAFO, a “generator” of, and has engaged in the “storage” in “containers” at the Facility of materials described below that are “solid wastes” and “hazardous wastes”, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, which with the exception of the term “storage” and which is defined in 25 Pa. Code § 260a.10.
19. On May 23-24, 2017, representatives of EPA conducted a RCRA Compliance Evaluation Inspection (“RCRA CEI”) at the Facility.

20. Respondent generates waste barium at the Facility which is a hazardous waste (EPA Hazardous Waste No. D005) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. §261.24 because it exhibits the characteristics of toxicity.

COUNT I

(Hazardous Waste Determination)

21. The preceding paragraphs are incorporated by reference.
22. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following methods:
- (a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.
 - (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.
 - (c) For purposes of compliance with 40 C.F.R. Part 268, or if the waste is not listed in subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in subpart C of 40 C.F.R. Part 261 by either:
 - (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or
 - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
23. From at least February 1, 2013 until May 23, 2017, Respondent mixed chrome-destruct waste water treatment plant (WWTP) sludge with non-chrome WWTP sludge prior to conducting Toxicity Characteristic Leaching Procedure (TCLP) analyses on the sludge from the mixed chrome-destruct WWTP, which is “solid waste” as defined at 25 Pa. 25 Pa. Code § 261a.2, which incorporates by reference 40 C.F.R. § 261.2.
24. From at least August 1, 2016 until May 23, 2017, Respondent did not conduct adequate hazardous waste determinations on sludge from a tank known at the Facility as the “Pre-Flux” tank, which is “solid waste” as defined at 25 Pa. 25 Pa. Code § 261a.2, which incorporates by reference 40 C.F.R. § 261.2.

25. From at least February 1, 2013 until May 23, 2017, Defendant had not conducted hazardous waste determinations on waste material generated at the Facility with EPA Hazardous Waste Codes D005, which is a "solid waste" as defined at 25 Pa. Code § 261a.2, which incorporates by reference 40 C.F.R. § 261.2.
26. The wastes referred to in Paragraphs 23 - 25 above, are and were at the time of the alleged violations "solid wastes" as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2, with exceptions not relevant here.
27. From at least February 1, 2013 until May 23, 2017, Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to conduct hazardous waste determinations on solid waste generated at the Facility.

COUNT II

(Failure to Prepare a Manifest for Shipment of Hazardous Waste)

28. The preceding paragraphs are incorporated by reference.
29. 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.20(a)(1) with exceptions not relevant herein, requires that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix in 40 C.F.R. Part 262.
30. In December 2016 and in June 2017, Respondent shipped hazardous waste barium (EPA Hazardous Waste No. D005) off-site for disposal without preparing a hazardous waste manifest as required by 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.20(a)(1) with exceptions not relevant herein.
31. From at least December 1, 2016 through June 30, 2017, Respondent violated 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.20(a)(1), with exceptions not relevant herein by failing to prepare a manifest as required by 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.20(a)(1), with exceptions not relevant herein for hazardous waste offered for transport.

COUNT III

(Failure to Designate Permitted Facility to Accept Hazardous Waste Shipped Off-Site)

32. The preceding paragraphs are incorporated by reference.

33. 40 C.F.R. § 262.20(b) requires a hazardous waste generator to designate on the hazardous waste manifest one facility which is permitted to handle the waste described on the manifest.
34. In December 2016 and in June 2017, Respondent failed to designate on a hazardous waste manifest a facility permitted to receive hazardous waste described on the manifest, specifically, hazardous waste barium (EPA Hazardous Waste No. D005).
35. From at least December 1, 2016 until at least June 30, 2017, Respondent violated 40 C.F.R. § 262.20(b) by failing to designate on a hazardous waste manifest a facility permitted to receive hazardous waste described on the manifest, specifically, hazardous waste barium (EPA Hazardous Waste No. D005).

III. CIVIL PENALTIES

36. Respondent agrees to pay a civil penalty in the amount of THIRTY-SIX THOUSAND EIGHTY DOLLARS (\$36,080.00) in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.
37. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including the penalty criteria 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 reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* and the January 11, 2018 memorandum by EPA Assistant Administrator Susan Parker Bodine entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018)*.
38. Payment of the civil penalty as required by Paragraph 36, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 41 - 43, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2019-0036;

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 to:
U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Craig Steffen 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
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1818

E. All payments made by 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"

F. 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: John Schmid 202-874-7026 or REX, 1-866-234-5681

- G. On-Line Payment Option: WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.
- H. Point of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):
Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:

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

- 39. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

- 40. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
- 41. 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 in this

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

42. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
43. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly. A penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. RESERVATION OF RIGHTS

44. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. 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 or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Compliance with this 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.

V. OTHER APPLICABLE LAWS

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

VI. CERTIFICATION OF COMPLIANCE

46. Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all applicable provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and the federally authorized PaHWMR, for which violations are alleged in this Consent Agreement.

VII. PARTIES BOUND


47. 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.

VIII. EFFECTIVE DATE

48. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

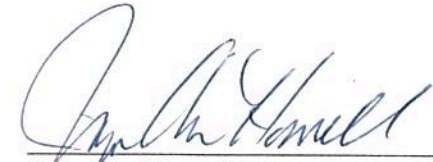
For Respondent, Apex Tool Group, LLC:

Date: 12/13/18

By: 
Karen McDougall
Director of Operations

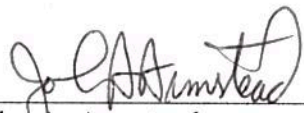
For Complainant, United States Environmental Protection Agency, Region III:

Date: 12/19/2018

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

1.31.19
Date

By: 
John A. Armstead
Director
Land and Chemicals Division

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

In the Matter of:	:	
	:	
Apex Tool Group, LLC	:	U.S. EPA-REGION 3-RHC
	:	FILED-8FEB2019PM2:53
Respondent.	:	
	:	EPA Docket No. RCRA-03-2019-0036
Apex Tool Group, LLC	:	
3990 E. Market Street	:	
York, Pennsylvania, 17402,	:	
	:	Proceeding under Section 3008(a)
Facility.	:	of the Resource Conservation and
	:	Recovery Act, as amended, 42 U.S.C.
	:	Section 6928(a)
	:	
	:	
	:	

FINAL ORDER

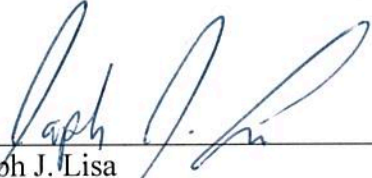
Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Apex Tool Group, LLC, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing 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 of **THIRTY-SIX THOUSAND AND EIGHTY DOLLARS (\$36,080.00)**, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

2-6-2019
Date:



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

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

In the Matter of:	:	
	:	
Apex Tool Group, LLC	:	
	:	
Respondent.	:	
	:	EPA Docket No. RCRA-03-2019-0036
Apex Tool Group, LLC	:	
3990 E. Market Street	:	
York, Pennsylvania, 17402,	:	
	:	
Facility.	:	Proceeding under Section 3008(a)
	:	of the Resource Conservation and
	:	Recovery Act, as amended, 42 U.S.C.
	:	Section 6928(a)
	:	
	:	
	:	

CERTIFICATE OF SERVICE

I certify that on February 6, 2019, the original and one copy of the Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Via UPS, next day delivery to:

Mr. Robert Tyson, Esq.
Bond, Schoeneck & King PLLC
One Lincoln Center,
Syracuse, NY 13202-1355
(Attorney for Respondent)

Via Hand Deliver or Inter-Office Mail:

Joyce Howell
Senior assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S.EPA, Region III
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: FEB 06 2019

Bevin Esposito
Bevin Esposito
Regional Hearing Clerk
U.S. EPA - Region III

TRACKING NUMBERS: UPS 1Z A43 F71 01 9425 3126