BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In the Matter of:	:	
	:	
Warner Graham LLLP	:	
160 Church Lane	:	**Docket No. RCRA-03-2013-011[illegible]**
Cockeysville, MD 21030	:	
	:	
Respondent	:	
	:	
	:	**Proceeding under Section 3008(a) and**
160 Church Lane	:	**(g) of the Resource Conservation and**
Cockeysville, MD 21030	:	**Recovery Act, as amended, 42 U.S.C.**
EPA Facility ID No. MDR000007443	:	**Section 6928(a) and (g)**
	:	
Facility	:	
	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Warner Graham LLLP ("Respondent") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments ("HSWA") of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The Consolidated Rules of Practice, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO"), (collectively referred to herein as the "CAFO"), simultaneously commence and conclude this administrative proceeding against Respondent.

3. The State of Maryland has received federal authorization to administer a Hazardous Waste Management Program (the State of Maryland Hazardous Waste Management Regulations) *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The State of Maryland Hazardous Waste Management Regulations ("MdHWMR") were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). The State of Maryland has not been granted authorization to administer its hazardous waste management program in lieu of certain provisions of the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. Consequently, pursuant to RCRA Section 3006(g), 42 U.S.C. § 6926(g), these provisions are enforceable in Maryland exclusively by EPA. Relevant to this CA, the State of Maryland has not received federal authorization to administer the regulations relating to equipment that contains or contacts hazardous waste with an organic concentration that equals or exceeds 10% by weight, or tanks and containers that contain an average volatile organic concentration equal to or greater than 500 parts per million by weight, promulgated at 40 C.F.R. Part 264, Subparts BB and CC.

4. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

5. This CA and the accompanying FO address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939e, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the MdHWMR, set forth at the Code of Maryland Regulations ("COMAR"), Title 26, Subtitle 13 *et seq.,* in connection with Respondent's facility located at 160 Church Lane, Cockeysville, Maryland 21030 (the "Facility"). Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized MdHWMR requirements cite those respective provisions as the authority for such allegations or conclusions. Factual allegations or legal conclusions in this CA that are based solely on provisions of the federal hazardous waste management program for which the State of Maryland has not yet received authorization, such as the regulations promulgated at 40 C.F.R. Part 264, Subparts BB and CC, cite the associated federal provisions as the authority for those particular allegations or conclusions.

6. On October 3, 2012, EPA sent a letter to the State of Maryland, through the Maryland Department of the Environment ("MDE"), providing prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. GENERAL PROVISIONS

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

8. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 7, above.

9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, issuance of the attached FO, or the enforcement of the CAFO.

10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

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 in connection with this proceeding.

13. The settlement agreed to by the parties in this Consent Agreement reflects their desire to resolve this matter without the expense and burden of litigation.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with the Consolidated Rules of Practice, at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the findings of fact and conclusions of law as set forth below.

15. The United States Environmental Protection Agency's Office of Administrative Law Judges has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), and 40 C.F.R. § 22.1(a)(4) and .4(c).

16. Respondent, Warner Graham LLLP, is a Maryland limited liability limited partnership and is a "person" as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).

17. Respondent is and has been, at all times relevant to the allegations set forth in this CAFO, the "owner" and "operator" of a "tank" (described further as the "Aboveground Storage Tank" in Paragraph 19, below), located at 160 Church Lane, Cockeysville, Maryland 21030 (the "Facility"), as these terms are defined by COMAR 26.13.01.03B (23), (58), (59) and (78).

18. At the Facility, Respondent repackages solvents for use in the fuel, automotive and cosmetics industries. Bulk solvents stored in the Facility's tank yard are transported through several pipes into the Mixing Room, where they are added to containers or mixing tanks according to various customer recipes. Excess solvent is generated when these lines are drained or when the mixing tanks are cleaned. This excess solvent is collected in small pails. At the end of each working day, Facility personnel determine whether the collected excess solvent can be reused. If the solvent cannot be reused, the contents of the pails are dumped into any one of several 55-gallon drums, which are also located in the drum storage area of Facility Mixing Room. Respondent has stored and continues to store hazardous waste in 55-gallon drums in the Facility Mixing Room.

19. At Respondent's Facility, one of the aboveground storage tanks ("Aboveground Storage Tank") is divided into several compartments and has a storage compartment with the capacity to hold 5,000 gallons (known as "Tank Compartment 1B"). Beginning in 2008, Respondent began storing waste solvent in Tank Compartment 1B. On a weekly basis, Facility personnel took full drums of waste solvent to the Truck Unloading Station next to the tank farm, and the contents were pumped directly from the drums, through piping, into Tank Compartment 1B. All waste solvents stored in Tank Compartment 1B were 100% volatile organics, and all were ignitable hazardous wastes with EPA Hazardous Waste Code No. D001.

20. At all times relevant to the allegations set forth in this CAFO, Respondent has been a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous wastes" in Tank Compartment 1B at the Facility, as those terms are defined by COMAR 26.13.01.03B (29), (31), (73) and (76), as described below.

21. On April 18, 2012, EPA representatives conducted a Compliance Evaluation Inspection ("Inspection") of the Facility to examine Respondent's compliance with the federally-authorized MdHWMR requirements at the Facility.

22. On July 12, 2012, EPA issued to Respondent a formal information request letter ("IRL") pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), regarding the generation and management of hazardous wastes observed during the Inspection of the Facility. Respondent replied to this IRL in a letter dated August 13, 2012 ("IRL Response").

23. On January 15, 2013, EPA sent to Respondent a letter providing Respondent with an opportunity to show cause and provide further information" ("Show Cause Letter"),

providing Respondent with an opportunity to discuss alleged violations of Subtitle C of RCRA and the MdHWMR at the Facility that were set forth in the letter.

24. On February 13, 2013, Respondent emptied Compartment 1B of 2,480 gallons of hazardous waste, shipped this waste offsite, and documented the shipment in Manifest 005686573 FLE. Respondent arranged for Univar USA Inc. to perform a cleanout of Compartment 1B, which occurred on March 11, 2013.

25. On the basis of the Inspection, and a review of the supplemental information provided to EPA by Respondent in response to EPA's IRL, 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 MdHWMR requirements promulgated thereunder.

COUNT I

(Operating a Hazardous Waste Storage Facility without a Permit or Interim Status)

26. The allegations of Paragraphs 1 through 25 of the CAFO are incorporated herein by reference as though fully set forth at length.

27. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste treatment, storage or disposal facility ("TSDF") unless such person has first obtained a permit or interim status for the facility.

28. Respondent has never had "interim status" pursuant to RCRA Section 3005(e) or COMAR 26.13.06, or a permit issued pursuant to RCRA Section 3005(a) or COMAR 26.13.07, for the treatment, storage, or disposal of hazardous waste.

29. Pursuant to COMAR 26.13.03.05E(1), 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, as long as the hazardous waste is stored in accordance with a number of conditions set forth in that section.

30. Respondent failed to meet the conditions for the less than 90-day storage of hazardous waste exemption during the time periods set forth below and therefore was the owner or operator of a hazardous waste TSDF during such period. Inventory records and Facility shipping practices indicate that Respondent stored hazardous waste in Tank Compartment 1B of the Aboveground Storage Tank at the Facility from some time prior to September 2008 until March 11, 2013, when the Tank was cleaned out and closed. This period of storage was beyond the 90 days permitted under the 90-day storage limitation.

31. To qualify for the 90-day storage exemption from permit requirements, the generator of hazardous waste must also comply with a series of requirements specified in COMAR 26.13.03.05E(1)(g) and (h). The following acts or omissions, further described in the Counts below, prevent Respondent from qualifying for the exemption from permit requirements from September 2008 to September 2013:

   a. Respondent failed to conduct the initial and refresher hazardous waste training described in COMAR 26.13.05.02G(2) and (3), as required by COMAR 26.13.03.05E(1)(g), from September 2008 to April 2013.

   b. Respondent failed to maintain hazardous waste training and personnel documents, as described in COMAR 26.13.05.02G(4), as required by COMAR 26.13.03.05E(1)(g), from September 2008 to April 2013.

   c. Respondent failed to maintain an adequate contingency plan, as described in COMAR 26.13.05.04, as required by COMAR 26.13.03.05E(1)(g), from September 2008 to April 2013.

   d. Respondent failed to conduct and document daily hazardous waste tank inspections of its Aboveground Storage Tank at the Facility, as described in COMAR 26.13.05.10D(2) and (5), as required by COMAR 26.13.03.05E(1)(h)(i), from September 2008 to March 11, 2013.

   e. Respondent failed to maintain a certified integrity assessment of its Aboveground Storage Tank at the Facility, as described in COMAR 26.13.15.10-3B(1) and (11), as required by COMAR 26.13.03.05E(1)(h)(i), from September 2008 to March 11, 2013.

   f. Respondent failed to maintain adequate secondary containment for its Aboveground Storage Tank at the Facility, as described in COMAR 26.13.05.10-4E(1), as required by COMAR 26.13.03.05E(1)(h)(ii), from September 2008 to March 11, 2013.

   g. Respondent failed to label its Aboveground Storage Tank at the Facility, as described in COMAR 26.13.03.05E(1)(h)(iv), from September 2008 to March 11, 2013.

32. From September 2008 until September 2013, Respondent owned and/or operated a hazardous waste storage facility without a permit, interim status, or valid exemption. Therefore, Respondent operated the Facility in violation of the requirements set forth in Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A.

COUNT II

(Failure to Retain TSD Signed Manifests or Submit Exception Report, as Required by COMAR 26.13.03.06A(1) and .06C(2))

33. The allegations of Paragraphs 1 through 32 of the CAFO are incorporated herein by reference as though fully set forth at length.

34. COMAR 26.13.03.06A(1) requires that a generator of hazardous waste shall keep at the Facility a copy of each hazardous waste manifest, signed by the designated receiving treatment storage or disposal facility ("TSDF"), for at least three years from the date that the waste was accepted by the initial transporter.

35. COMAR 26.13.03.06C(2) requires that a generator of hazardous waste shall submit an exception report to the Secretary of MDE if it does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated receiving TSDF within 30 days of the date that the waste was accepted by the initial transporter.

36. On at least the following two occasions, Respondent shipped hazardous waste with EPA Hazardous Waste Code Nos: D001 and D035 from the Facility:

    a. A shipment dated 8/10/10 and documented in Manifest #003162117, and

    b. A shipment dated 2/3/11 and documented in Manifest #003162289.

37. Respondent failed to keep and maintain at the Facility a copy of the returned Manifest #003162117 and Manifest #003162289, signed by the designated receiving TSDF, or failed to file exception reports, for the two hazardous waste shipments associated with Manifest #003162117 and Manifest #003162289.

38. Respondent violated COMAR 26.13.03.06A(1) and/or COMAR 26.13.03.06C(2) by failing to keep and maintain at the Facility copies of Manifest #003162117 and Manifest #003162289, signed by the designated receiving TSDF and/or failing to submit exception reports for the shipments of hazardous waste associated with Manifest #003162117 and Manifest #003162289.

COUNT III

(Failure to Submit Biennial Report, as Required by COMAR 26.13.03.06B(1)(b)(ii))

39. The allegations of Paragraphs 1 through 38 of the CAFO are incorporated herein by reference as though fully set forth at length.

40. COMAR 26.13.03.06B(1)(b)(ii) requires that a person who generates hazardous waste and ships it off-site to a TSDF in the United States must submit to MDE biennial reports containing specified information. Each report must contain the EPA identification

number, name and address of the generator, the transporter and the TSDF, as well as a description of each hazardous waste (by EPA identification number and Department of Transportation hazard class), the quantity of each waste, efforts to reduce toxicity, and other specified information. COMAR 26.13.03.06B(1)(c)(ii) requires the generator to submit the biennial report not later than March 1 of each even numbered year, for the prior reporting period.

41. Respondent failed to submit to MDE a biennial report for the Facility for the year 2009 not later than March 1, 2010.

42. Respondent violated COMAR 26.13.03.06B(1)(b)(ii) by failing to submit a 2009 biennial report for the Facility to MDE not later than March 1, 2010.

COUNT IV

(Failure to Provide Initial and Annual Hazardous Waste Refresher Training, as Required by COMAR 26.13.05.02G(2) and (3))

43. The allegations of Paragraphs 1 through 42 of the CAFO are incorporated herein by reference as though fully set forth at length.

44. COMAR 26.13.05.02G(2) and (3) require that the owner or operator of a hazardous waste facility provide initial training and annual refresher training to each person employed at the Facility in a position related to hazardous waste management. The training programs may consist of classroom instruction or on-the-job training.

45. Respondent failed to provide initial training or refresher training on an annual basis to six employees at the Facility who performed hazardous waste management duties, during calendar years 2008 through 2012. Respondent provided this initial training or refresher training in April 2013.

46. From January 2008 through April 2013, Respondent violated COMAR 26.13.05.02G(2) and (3) by failing to provide Facility personnel engaged in hazardous waste management with initial hazardous waste training and refresher training.

COUNT V

(Failure to Prepare and Maintain Hazardous Waste Training and Personnel Records, as Required by COMAR 26.13.05.02G(4))

47. The allegations of Paragraphs 1 through 46 of the CAFO are incorporated herein by reference as though fully set forth at length.

48. COMAR 26.13.05.02G(4) requires that the owner and operator of a hazardous waste facility maintain records which document (a) the job title for each position at the facility

related to hazardous waste management and the name of the employee filling each such job, (b) a written job description of each such position, (c) a written description of the type and amount of introductory and continuing training that will be given to each such person filling such position, and (d) records that document the training or job experience that has been given to, or completed by, facility personnel who perform hazardous waste management.

49. Pursuant to COMAR 26.13.05.02G(5), such training records on current personnel shall be maintained at the facility until closure of the facility.

50. Respondent failed to maintain at the Facility records, including the documented job title and written job description, for each position related to hazardous waste management at the Facility, and failed to maintain a record of the name of each employee assigned to each hazardous waste management job at the Facility, from the time period of September 2008 to April 2013.

51. From September 2008 to April 2013, Respondent violated COMAR 26.13.05.02G(4)(a) and (b), and (5) by failing to maintain required hazardous waste training and personnel records at the Facility.

COUNT VI

(Failure to Maintain an Adequate Contingency Plan, as Required by COMAR 26.13.05.04)

52. The allegations of Paragraphs 1 through 51 of the CAFO are incorporated herein by reference as though fully set forth at length.

53. COMAR 26.13.05.04 requires that the owner and operator of a hazardous waste facility maintain a contingency plan documenting the facility's planned response to fires, explosions, unplanned sudden or non-sudden releases of hazardous waste. The plan must describe arrangements to coordinate with local emergency services, list the contact information of all emergency coordinators for the facility, list all emergency equipment, and include an evacuation plan.

54. Respondent's Contingency Plan for the Facility, dated February 13, 2012, lacked the following required information:

    a. Descriptions of actions to respond to fires or explosions, as required by COMAR 26.13.05.04C(1);

    b. Locations of spill control equipment, as required by COMAR 26.13.05.04C(5);

    c. Identification of the primary emergency coordinator, as required by COMAR 26.13.05.04C(4);

d. Addresses for all of the emergency coordinators, as required by COMAR 26.13.05.04C(4); and

e. Arrangements with local authorities, as required by COMAR 26.13.05.04C(3).

55. From February 13, 2012 to April 18, 2013, Respondent violated COMAR 26.13.05.04 by failing to maintain an adequate contingency plan for the Facility.

COUNT VII

(Failure to Conduct and Document Daily Hazardous Waste Tank Inspections, as Required by COMAR 26.13.05.10D(2) and (5))

56. The allegations of Paragraphs 1 through 55 of the CAFO are incorporated herein by reference as though fully set forth at length.

57. COMAR 26.13.05.10D(2) requires that the owner and operator of a hazardous waste tank system 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; (b) for uncovered tanks, the level of waste in the tank to ensure compliance with §C(2)(b) of this regulation; (c) above-ground portions of the tank system to detect corrosion or releases of waste; and (d) the construction materials of, and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.

58. COMAR 26.13.05.10D(5) requires that the owner and operator of a hazardous waste tank system document, in the operating record of the facility, inspections of the items specified in Section D(2).

59. From at least September 2008 through March 11, 2013, Respondent failed to perform inspections of its Aboveground Storage Tank once each operating day to observe the conditions specified in Section D(2), and failed to maintain daily inspection records.

60. From September 2008 through March 11, 2013, Respondent violated COMAR 26.13.05.10D(2) and (5) by failing to perform daily inspections of the Aboveground Storage Tank and failing to maintain daily inspection records.

COUNT VIII

(Failure to Maintain Certified Integrity Assessment of New Hazardous Waste Tank, as Required by COMAR 26.13.05.10-3B(1) and (11))

61. The allegations of Paragraphs 1 through 60 of the CAFO are incorporated herein by reference as though fully set forth at length.

62. COMAR 26.13.05.10-3B(1) requires that the owner and operator of a new hazardous waste tank system demonstrate, through a written assessment reviewed and certified by an independent, qualified, registered professional engineer, in accordance with COMAR 26.13.07.03D, that the tank system has sufficient structural integrity and is acceptable for the management of hazardous waste.

63. COMAR 26.13.05.10-3B(11) requires that the owner and operator of a new hazardous waste tank system obtain and keep on file at the facility written statements that the tank system was properly designed and installed, and that repairs required by this regulation were performed.

64. In 2008, Respondent began storing hazardous waste in Tank Compartment 1B of the Aboveground Storage Tank at the Facility. During the Inspection on April 18, 2012, Respondent was unable to demonstrate, through a written statement certified by an independent, qualified, registered professional engineer, that the Aboveground Storage Tank system had sufficient structural integrity and was acceptable for the management of hazardous waste. Respondent also failed to have on file at the Facility a written statement that the Aboveground Storage Tank system was properly designed and installed, and that repairs required by this regulation were performed. At the time Respondent sent its IRL Response to EPA, it still did not have these statements.

65. From September 2008 through March 11, 2013, Respondent violated COMAR 26.13.05.10-3B(1) by failing to demonstrate through a written statement certified by an independent, qualified, registered professional engineer, that the Aboveground Storage Tank system at the Facility had sufficient structural integrity and was acceptable for the management of hazardous waste.

66. From September 2008 through March 11, 2013, Respondent violated COMAR 26.13.05.10-3B(11) by failing to maintain on file at the Facility a written statement that the Aboveground Storage Tank system was properly designed and installed, and that repairs required by this regulation were performed.

COUNT IX

(Failure to Maintain Adequate Secondary Containment for Hazardous Waste Tank, as Required by COMAR 26.13.05.10-4E(1))

67. The allegations of Paragraphs 1 through 66 of the CAFO are incorporated herein by reference as though fully set forth at length.

68. COMAR 26.13.05.10-4E(1) requires that the owner and operator of a hazardous waste facility ensure that the external liner system of a hazardous waste tank is: (a) designed or operated to contain 100 percent of the capacity of the largest tank within the boundary of the liner system; (b) designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration and the additional capacity is sufficient to contain precipitation from a 25-year, 24-hour rainfall event; (c) free of cracks or gaps; and (d) designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank or tanks.

69. From April 18, 2012 through March 11, 2013, Respondent failed to maintain adequate secondary containment for the Aboveground Storage Tank at the Facility by failing to keep the Tank's external liner system free of cracks or gaps, and failing to have designed and installed such system in a manner that would cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank.

70. From April 18, 2012 through March 11, 2013, Respondent violated COMAR 26.13.05.10-4E(1) by failing to maintain adequate secondary containment for the Aboveground Storage Tank at the Facility by failing to keep the Tank's external liner system free of cracks or gaps, and failing to have designed and installed such system in a manner that would cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank.

COUNT X

(Failure to Determine Whether Equipment Contains or Contacts a Hazardous Waste With 10% or More Organic Concentration, as Required by 40 C.F.R. § 264.1063(d))

71. The allegations of Paragraphs 1 through 70 of the CAFO are incorporated herein by reference as though fully set forth at length.

72. The waste solvent generated and stored at the Facility was a hazardous waste and had an organic concentration that equaled or exceeded 10% by weight; therefore all the equipment at the Facility, including the equipment discussed in paragraph 78, below, that contained or contacted this hazardous waste was subject to 40 C.F.R. Part 264, Subpart BB.

73. 40 C.F.R. § 264.1063(d) requires that owners and operators of a facility who are regulated by 40 C.F.R. Part 264, Subpart BB determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10% by weight. This determination is made using a methodology set forth in 40 C.F.R. § 260.11, or through application of knowledge of the nature of the hazardous waste stream or the process by which it was produced.

74. Respondent failed to determine, for each piece of equipment at the Facility, whether the equipment "contained" or "contacted" hazardous waste which had an organic concentration that equaled or exceeded 10% by weight, within the meaning of the regulations.

75. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1063(d) by failing to determine, for each piece of equipment at the Facility, whether the equipment contained or contacted a hazardous waste with an organic concentration that equaled or exceeded 10% by weight.

COUNT XI

(Failure to Mark Each Piece of Equipment Subject to 40 C.F.R. Part 264, Subpart BB, as Required by 40 C.F.R. § 264.1050(d))

76. The allegations of Paragraphs 1 through 75 of the CAFO are incorporated herein by reference as though fully set forth at length.

77. 40 C.F.R. § 264.1050(d) requires that every piece of equipment at the Facility regulated under 40 C.F.R. Part 264, Subpart BB, shall be marked in such a manner that it can be readily distinguished from other pieces of equipment.

78. All of the pumps and valves in the lines used to pump hazardous waste to the Aboveground Storage Tank at the Facility were "equipment" that "contained" or "contacted" hazardous waste which had an organic concentration that equaled or exceeded 10% by weight, within the meaning of 40 C.F.R. § 264.1050(b), and were not otherwise exempt under that section. This hazardous waste is managed in a unit that is subject to the permitting requirements of 40 C.F.R. Part 270. Therefore, these pumps and valves at Respondent's Facility were subject to 40 C.F.R. Part 264, Subpart BB.

79. From September 2008 through March 11, 2013, Respondent failed to mark at least one pump and at least two valves at the Facility, subject to 40 C.F.R. Part 264, Subpart BB, in such a manner that that they could be distinguished readily from other pieces of equipment.

80. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1050(d) by failing to mark at least three pieces of equipment subject to 40 C.F.R.

Part 264, Subpart BB, in a manner such that they could be distinguished readily from other pieces of equipment.

COUNT XII

(Failure to Inspect Weekly and Monitor Monthly Pumps in Light Liquid Service, Subject to 40 C.F.R. Part 264, Subpart BB, as Required by 40 C.F.R. § 264.1052(a))

81. The allegations of Paragraphs 1 through 80 of the CAFO are incorporated herein by reference as though fully set forth at length.

82. 40 C.F.R. § 264.1052(a)(1), with exceptions not relevant to this matter, requires that each pump in light liquid service must be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 264.1063(b).

83. 40 C.F.R. § 264.1052(a)(2) requires that each pump in light liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

84. From September 2008 through March 11, 2013, Respondent failed to monitor monthly the pump associated with Compartment 1B of the Aboveground Storage Tank at the Facility, which is in light liquid service, to detect leaks by the methods specified in 40 C.F.R. § 264.1063(b).

85. From September 2008 through March 11, 2013, Respondent failed to check by visual inspection the pump associated with Compartment 1B of the Aboveground Storage Tank at the Facility, which is in light liquid service, each calendar week for indications of liquids dripping from the pump seal.

86. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1052(a)(1) by failing to monitor monthly the pump associated with the Compartment 1B of the Aboveground Storage Tank at the Facility, which is subject to Part 264, Subpart BB, to detect leaks by the methods specified in 40 C.F.R. § 264.1063(b).

87. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1052(a)(2) by failing to check by visual inspection each calendar week the pump associated with Compartment 1B of the Aboveground Storage Tank at the Facility, which is subject to Part 264, Subpart BB, for indications of liquids dripping from the pump seal.

COUNT XIII

(Failure to Monitor Monthly Valves in Gas/Vapor Service or in Light Liquid Service, Subject to 40 C.F.R. Part 264, Subpart BB, as Required by 40 C.F.R. § 264.1057(a))

88. The allegations of Paragraphs 1 through 87 of the CAFO are incorporated herein by reference as though fully set forth at length.

89. 40 C.F.R. § 264.1057(a), with exceptions not relevant to this matter, requires that each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R § 264.1063(b) and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

90. There were at least two valve sets associated with Aboveground Storage Tank at the Facility: one at the double elbow directly below the tank, and one at the tanker unloading station.

91. From September 2008 through March 11, 2013, Facility personnel failed to monitor monthly at least two valve sets associated with the Aboveground Storage Tank to detect leaks by the methods specified in 40 C.F.R § 264.1063(b), and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

92. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1057(a) by failing to monitor monthly at least two valve sets associated with the Aboveground Storage Tank to detect leaks by the methods specified in 40 C.F.R § 264.1063(b), and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

COUNT XIV

(Failure to Maintain Records for Equipment Subject to 40 C.F.R. Part 264, Subpart BB, as Required by 40 C.F.R. § 264.1064(b))

93. The allegations of Paragraphs 1 through 92 of the CAFO are incorporated herein by reference as though fully set forth at length.

94. 40 C.F.R. § 264.1064(b) requires the owner or operator of a hazardous waste storage facility to maintain records for equipment subject to Subpart BB regulation, including (i) equipment identification number and hazardous waste unit identification, (ii) approximate locations within the facility, (iii) type of equipment, (iv) percent-by-weight total organics in the hazardous waste stream at the equipment, (v) hazardous waste state at the equipment, and (vi) any compliance measures that are in effect.

95. From September 2008 through March 11, 2013, Respondent failed to maintain records at the Facility required for the equipment subject to Part 264, Subpart BB regulation and associated with the Aboveground Storage Tank.

96. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1064(b) by failing to keep records for equipment subject to Part 264, Subpart BB.

COUNT XV

(Failure to Determine Maximum Organic Vapor Pressure for Hazardous Waste Tank Subject to 40 C.F.R. Part 264, Subpart CC, as Required by 40 C.F.R. § 264.1083(c)(1))

97. The allegations of Paragraphs 1 through 96 of the CAFO are incorporated herein by reference as though fully set forth at length.

98. 40 C.F.R. § 264.1080(a) provides, in relevant part, that the requirements of 40 C.F.R. Part 264, Subpart CC (hereinafter "Subpart CC"), apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks subject to 40 C.F.R. Part 264, Subpart J, except as 40 C.F.R. § 264.1 and 40 C.F.R. § 264.1080(b) provide otherwise.

99. At all times relevant to the allegations herein, Respondent owned and operated a facility (i.e., the Facility) that treated, stored, or disposed of hazardous waste in a tank (i.e., the Aboveground Storage Tank) that was subject to the requirements of 40 C.F.R. Part 264, Subpart J, and which was operated by the Respondent as a waste management unit in a manner that did not qualify for any 40 C.F.R. § 264.1 or 40 C.F.R. § 264.1080(b) exception to the requirements of Subpart CC. At all times relevant to the allegations herein, the Aboveground Storage Tank at the Facility contained hazardous waste which, when entering the Tank, had an average volatile organic concentration equal to or greater than 500 parts per million by weight at the point of waste origination. Therefore, Respondent's Aboveground Storage Tank was subject to the standards specified in 40 C.F.R. § 264.1084 through § 264.1087, and the associated regulatory requirements in 40 C.F.R. Part 264, Subpart CC.

100. At all times relevant to the allegations herein, Respondent's Aboveground Storage Tank used Tank Level 1 controls.

101. 40 C.F.R. § 264.1083(c) requires the owner or operator of a tank subject to 40 C.F.R. Part 264, Subpart CC to determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in 40 C.F.R. § 264.1084(c). 40 C.F.R. § 264.1084(c)(1) requires the owner or operator to determine the maximum organic vapor pressure for a hazardous waste to be managed in a tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank.

102. From September 2008 through March 11, 2013, Respondent failed to determine the maximum organic vapor pressure for organic hazardous wastes at the Facility prior to placing wastes into the Aboveground Storage Tank.

103. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1083(c) by failing to determine the maximum organic vapor pressure for organic hazardous wastes at the Facility prior to placing wastes into the Aboveground Storage Tank subject to 40 C.F.R. Part 264, Subpart CC.

COUNT XVI

(Failure to Inspect and Monitor Emission Control Equipment Subject to 40 C.F.R. Part 264, Subpart CC, as Required by 40 C.F.R. § 264.1088 and 264.1084)

104. The allegations of Paragraphs 1 through 103 of the CAFO are incorporated herein by reference as though fully set forth at length.

105. 40 C.F.R. § 264.1088(a) requires the owner or operator of a tank subject to Part 264, Subpart CC to inspect and monitor air emission control equipment used to comply with Subpart CC, in accordance with the applicable requirements specified 40 C.F.R. § 264.1084.

106. 40 C.F.R. § 264.1088(b) requires the owner or operator of a tank subject to Subpart CC to develop and implement a written plan and schedule to perform these inspections and monitoring.

107. Respondent had a manhole and conservation vent on the Aboveground Storage Tank, which served as Level 1 emissions control equipment on this Tank.

108. From September 2008 through March 11, 2013, Respondent failed to inspect and monitor the manhole and conservation vent on the Aboveground Storage Tank at the Facility, and failed to develop a written plan and schedule to perform such inspections and monitoring.

109. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1088 by failing to inspect and monitor air pollution control equipment used to comply with Part 264, Subpart CC, and failing to develop a written plan and schedule to perform such inspections and monitoring.

COUNT XVII

(Failure to Maintain Records for Tank Subject to 40 C.F.R. Part 264, Subpart CC, as Required by 40 C.F.R. § 264.1089(a) and (b))

110. The allegations of Paragraphs 1 through 109 of the CAFO are incorporated herein by reference as though fully set forth at length.

111. 40 C.F.R. § 264.1089(a) and (b) require the owner or operator to maintain, in the facility operating record, records for tanks subject to 40 C.F.R. Part 264, Subpart CC, for a

minimum of three years. For each tank using air emission controls in accordance with the requirements of 40 C.F.R. § 264.1084, the owner or operator shall record: (i) a tank identification number (or other unique identification description as selected by the owner or operator), (ii) a record for each inspection required by 40 C.F.R. § 264.1084, and (iii) depending on the tank's construction, other documentation demonstrating compliance with the air pollution control requirements of Subpart CC.

112. From September 2008 through March 11, 2013, Respondent failed to maintain inspection reports and air pollution control documentation for the Aboveground Storage Tank at the Facility.

113. From September 2008 through March 11, 2013, Respondent violated 40 C.F.R. § 264.1089(a) and (b) by failing to keep inspection reports and air pollution control records for the Aboveground Storage Tank subject to Part 264, Subpart CC.

IV. CIVIL PENALTY

114. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of **EIGHTY THOUSAND FIVE HUNDRED SIXTY DOLLARS ($80,560.00)**, which Respondent agrees to pay 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 signed copy of this CA/FO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.

115. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), which include the seriousness of the violation and any good faith efforts to comply with applicable requirements, EPA's RCRA Civil Penalty Policy (June 2003) ("Penalty Policy"), and with the penalty inflation provisions of 40 C.F.R. Part 19.

116. The civil penalty of EIGHTY THOUSAND FIVE HUNDRED SIXTY DOLLARS ($80,560.00), set forth in Paragraph 114, above, may be paid in five (5) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

a. 1st Payment: The first payment in the amount of SIXTEEN THOUSAND ONE HUNDRED TWELVE DOLLARS ($16,112.00) consisting of a principal payment of $16,112.00 and an interest payment of $0.00, shall be paid within

thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

b. 2nd Payment: The second payment in the amount of SIXTEEN THOUSAND TWO HUNDRED THIRTY-THREE DOLLARS AND FIFTY-SEVEN CENTS ($16,233.57) consisting of a principal payment of $16,070.66 and an interest payment of $162.91, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

c. 3rd Payment: The third payment in the amount of SIXTEEN THOUSAND ONE HUNDRED SEVENTY-NINE DOLLARS AND EIGHTY-SIX CENTS ($16,179.86) consisting of a principal payment of $16,096.54 and an interest payment of $83.32, shall be paid within one hundred fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and

d. 4th Payment: The fourth payment in the amount of SIXTEEN THOUSAND ONE HUNDRED SEVENTY-NINE DOLLARS AND EIGHTY-SIX CENTS ($16,179.86) consisting of a principal payment of $16,126.96 and an interest payment of $52.90, shall be paid within two hundred ten (210) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

e. 5th Payment: The fifth payment in the amount of SIXTEEN THOUSAND ONE HUNDRED SEVENTY-NINE DOLLARS AND EIGHTY-SIX CENTS ($16,179.86) consisting of a principal payment of $16,153.84 and an interest payment of $26.02, shall be paid within two hundred seventy (270) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of EIGHTY THOUSAND FIVE HUNDRED SIXTY DOLLARS ($80,560.00) and total interest payments in the amount of THREE HUNDRED TWENTY-FIVE DOLLARS AND FIFTEEN CENTS ($325.15).

117. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 116, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 120, 121, 122 and 123 below, in the event of any such failure or default.

118. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

119. Respondent shall remit payment for the civil penalty set forth in Paragraph 114, above, and/or any administrative fees and late payment penalties, in accordance with Paragraphs 121, 122 and 123, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., RCRA-03-2013-0110;

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

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 & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
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 No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

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

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV

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

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Payment by Respondent shall reference Respondent's name and address, and EPA Docket Number of this CAFO (Docket No. RCRA-03-2013-0110). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Natalie L. Katz
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

120. 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.

121. 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).

122. 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.

123. A late payment penalty of six percent 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).

124. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

125. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's *Supplemental Environmental Projects Policy*, effective May 1, 1998.

126. Respondent no longer stores hazardous waste in any aboveground storage tank at the Facility. The aboveground storage tanks at the Facility are only used to store useable

solvents that are products. These solvents are not "solid wastes" within the meaning of 40 C.F.R. § 261.2 or "hazardous wastes" within the meaning of 40 C.F.R. § 261.3.

127. Respondent agrees to install an external liner system around the aboveground storage tanks at the Facility as a SEP. The external liner system will be designed and installed to: (a) contain 150 percent of the capacity of the largest tank within the boundary of the liner system; (b) upon installation, be free of cracks or gaps that would allow material to leak out of the containment area; and (c) be located within the footprint of the existing containment walls that surround the tanks.

   a. Respondent shall timely identify, apply for, and obtain all required federal, state, and local permits necessary for performing the SEP, including without limitation, permits for construction.

   b. Respondent shall complete construction of the external liner system within one-hundred and twenty (120) days of the effective date of this CAFO.

   c. This SEP will reduce the risk of a release to the environment of the solvents that are stored in the aboveground storage tanks at the Facility.

128. Respondent's total expenditure for installation of this SEP shall not be less than **TWENTY FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS ($24,550.00).** Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 132, below.

129. Respondent hereby certifies that, as of the date of this CA, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop this SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

130. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

131. Respondent shall notify EPA, c/o Martin Matlin, US EPA Region III, 1650 Arch Street (Mail Code 3LC70), Philadelphia, PA 19103, matlin.martin@epa.gov, when installation of the external liner system is complete. EPA may grant Respondent an extension of time to fulfill this SEP obligation if EPA determines, in its sole and unreviewable discretion that, through no fault of Respondent, Respondent is unable to complete the installation of the external liner system within the time frame required by Paragraph 127(b), above. Requests for any extension must be made in writing within forty eight (48) hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the installation of the external liner system within the required time frame ("force majeure event"), and prior to

the expiration of the installation deadline. Any such requests should be directed to Martin Matlin at the address noted above.

132. Respondent shall submit a SEP Completion Report to EPA for the SEP, c/o Martin Matlin, US EPA Region III, 1650 Arch Street (Mail Code 3LC70), Philadelphia, PA 19103, matlin.martin@epa.gov, within thirty (30) days of completing construction of the external liner system. The SEP Completion Report shall contain the following information:

   a. Respondent's certification that the external liner system has been designed and installed in accordance with Paragraph 127;

   b. A description of any design or installation problems encountered and the solution thereto;

   c. Itemized costs;

      i. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.

      ii. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such.

      iii. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.

   d. Respondent shall, by its representative officer, sign the report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

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

e. Respondent agrees that failure to submit the report required by this Paragraph shall be deemed a violation of this CAFO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 136 through 138, below.

133. Respondent agrees that EPA may inspect the Facility at which this SEP is being implemented at reasonable times in order to confirm that this SEP is being undertaken in conformity with the requirements of this CAFO.

134. Upon receipt of the SEP Completion Report identified in Paragraph 132, above, EPA will provide written notification to the Respondent of one of the following:

a. If the SEP Completion Report is deficient, notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;

b. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the project has been completed in accordance with this CAFO; or

c. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has not been completed in accordance with this CAFO, notify the Respondent in writing that EPA has concluded that the project has not been completed in accordance with this CAFO and grant Respondent an additional fourteen (14) calendar days to complete the SEP in accordance with this SCAFO. If the SEP is not completed within such time period, EPA may seek stipulated penalties in accordance with Paragraphs 136 through 138, below.

135. If EPA provides notification in accordance with Paragraph 134(a), above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) calendar day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 136 through 138, below.

VI. STIPULATED PENALTIES

136. In the event that Respondent fails to comply with any of the terms or conditions of this CA relating to the performance of the SEP, described in Paragraph 127, above, submission of the SEP Completion Report, described in Paragraph 132, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 128, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) below, if the SEP has not been completed in accordance with Paragraph 127, above, Respondent shall pay a stipulated penalty to EPA in the amount of **TWENTY EIGHT THOUSAND DOLLARS ($28,000.00)**;

b. If the SEP is not completed in accordance with Paragraph 127, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to complete the project; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

c. If the SEP is completed in accordance with Paragraph 127, above, and the SEP Completion Report is submitted in accordance with Paragraph 132, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of **FOUR THOUSAND DOLLARS ($4,000.00)**;

d. If the SEP is completed in accordance with Paragraph 127, above, the SEP Completion Report is submitted in accordance with Paragraph 132, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty; and

e. If Respondent fails to submit the SEP Completion Report required by Paragraph 132, above, Respondent shall pay a stipulated penalty in the amount of **FIVE HUNDRED DOLLARS ($500.00)** for each day after the report was originally due until the report is submitted.

137. The determination of whether the SEP has been completed in accordance with Paragraph 127, above, and whether the Respondent has made a good faith, timely effort to complete the SEP shall be in the sole discretion of EPA.

138. Respondent shall pay stipulated penalties in accordance with Paragraphs 119 and 136 not more than fourteen (14) calendar days after receipt of written demand by EPA for such

penalties. Interest and late charges shall be paid as set forth in Paragraphs 121 through 123, above.

VII. FULL AND FINAL SATISFACTION

139. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. §6928(a) and (g), for the violations alleged in this CAFO for the specific violations alleged against Respondent in this Consent Agreement. 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.

VIII. CERTIFICATION OF COMPLIANCE

140. Based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle C of RCRA, by his or her signature herein, the person signing this CA on behalf of the Respondent certifies to EPA, to the best of the person's information and belief, that Respondent, as of the date of its execution of this CA, is in compliance with the provisions of RCRA, Subtitle C, Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939e, federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the MdHWMR, COMAR Title 26, Subtitle 13 *et seq.,* at the Facility referenced herein.

IX. RESERVATION OF RIGHTS

141. 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.

X. OTHER APPLICABLE LAWS

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

XI. AUTHORITY TO BIND THE PARTIES

143. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto. By his/her signature hereto, Respondent certifies that he/she is fully authorized to enter into the terms and conditions set forth in this CA and to bind the Respondent hereto.

XII. ENTIRE AGREEMENT

144. This Consent Agreement and the attached Final Order constitute 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 Consent Agreement and the attached Final Order.

XIII. EFFECTIVE DATE

145. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

The Warner Graham LLLP

9/18/13
Date

By: Alec Riepe
Title: President

For Complainant:

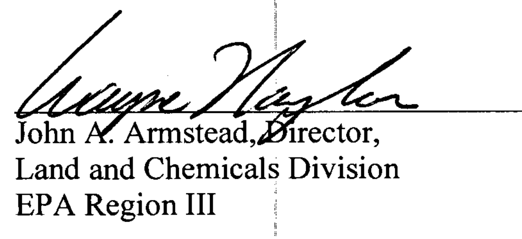
U.S. Environmental Protection Agency, Region III

9/19/13
Date

Natalie L. Katz
Sr. Assistant Regional Counsel

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

9/19/13
Date



John A. Armstead, Director,
Land and Chemicals Division
EPA Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

RECEIVED
2013 SEP 24 PM 3: 22
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:	:	
	:	
Warner Graham LLLP	:	
160 Church Lane	:	**Docket No. RCRA-03-2013-0110**
Cockeysville, MD 21030	:	
	:	
Respondent	:	
	:	
160 Church Lane	:	**Proceeding under Section 3008(a) and**
Cockeysville, MD 21030	:	**(g) of the Resource Conservation and**
EPA Facility ID No. MDR000007443	:	**Recovery Act, as amended, 42 U.S.C.**
	:	**Section 6928(a) and (g)**
Facility	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Warner Graham LLLP, have executed a document entitled "Consent Agreement" which I 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 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT

Respondent shall pay a civil penalty in the amount of **EIGHTY THOUSAND FIVE HUNDRED SIXTY DOLLARS ($80,560.00)** as specified in the Consent Agreement, and 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 is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 9/24/13

BY: Renée Sarajian
Renée Sarajian, Regional Judicial Officer
United States Environmental Protection Agency
Region III