

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

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PADEP”), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in the Paragraph above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and or the enforcement of this Consent Agreement and Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

13. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) (“PaHWMR”) in lieu of the federal hazardous waste management program under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939(g). Effective January 30, 1986, EPA authorized the PaHWMR pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. Thereby the authorized regulations of the PaHWMR became requirements of RCRA Subtitle C and are 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).
14. As part of the last PaHWMR revisions authorized by EPA, EPA authorized PaHWMR regulations that incorporate by reference, with certain exceptions, specific provisions of Title 40 of Code of Federal Regulations that were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). The Code of Federal Regulation citations used herein, when referring to the Federal regulations incorporated by the PaHWMR, are to the 2005 Federal regulations. Thus, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable RCRA regulation applicable in Pennsylvania. (On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 - 262.17.)
15. Respondent is, and was at the time of the violations alleged herein, a Delaware corporation registered to do business in the Commonwealth of Pennsylvania.
16. 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, and 25 Pa. Code § 260a.10.
17. Respondent is, and at all times relevant to this Consent Agreement was, the “operator” of a “facility,” as the terms “facility”, “owner” and “operator” are defined in 25 Pa. Code §§ 260a.1, and 260a.10.
18. The facility referred to in Paragraph 17, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a facility that engages in the sale, leasing, and servicing of general construction equipment and mining machinery at 2009 State Road, Camp Hill, Pennsylvania 17011.
19. Pennsylvania assigned the Respondent RCRA Generator ID No. PAD003018843.
20. Respondent was at all times relevant to this Consent Agreement and Final Order, 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, with the exception of the term “storage”, which is defined in 25 Pa. Code § 260a.10.
21. On September 9, 2020 and November 19, 2020 EPA sent letters to CB requesting information regarding compliance with PaHWMR and the requirements of RCRA at

Respondent's Facility.

22. Respondent is engaged in the repair of hydraulic cylinder components for heavy earthmoving equipment at the Facility. The processes involve the generation of hazardous waste from the re-chroming of cylinder rods through re-chroming tanks. Three re-chroming tanks are charged with water, chrome flakes, hydrochloric acid, and a catalyst. The waste generated at Facility is a hazardous waste (EPA Hazardous Waste Nos. D002, D007, D008, corrosive, chromium, and lead, respectively) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22.
23. From January 2017 through July 2020 Respondent generated more than 1000 kilograms of hazardous waste in a calendar month, and as such is a "large quantity generator" during that time period.
24. From January 2017 through July 2020, the hazardous waste described in Paragraph 22, above, was in "storage" in containers and tanks at the Facility.

Count I
Operating Without Interim Status or a Permit

25. The preceding paragraphs are incorporated by reference.
26. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
27. Respondent does not have a hazardous waste treatment or storage permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), for the treatment or storage of hazardous waste at the Facility.
28. 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(4) which in turn references 40 C.F.R. § 265.16 (which references personnel training), requires that facility personnel successfully complete a training program that includes, among other things, instruction in hazardous waste management procedures.
29. At the time of the CEI the training documents submitted by Respondent for its personnel training program did not include training on hazardous waste management or procedures as required by 25 Pa. Code § 262a.10.
30. From 2017 through 2020, Respondent failed to provide initial and annual training for personnel at the Facility for hazardous waste management and procedures and thus did not comply with the conditions for the permit exemption at 25 Pa. Code § 262.a.10.
31. Respondent stored hazardous waste without a permit and did not qualify for the 90-day permit exemption, nor interim status and thus was in violation of 25 Pa. Code § 270a.1 from 2017 through 2020.

Count II
Failure to Submit a 2019 Biennial Report

32. The preceding paragraphs are incorporated by reference.
33. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), and 25 Pa. Code § 262a.41, a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility (“TSDF”) within the United States must prepare and submit a single copy of a Biennial Report to PADEP for each odd numbered year. The Biennial Report for 2019 must be submitted to PADEP by March 1, 2020.
34. From 2017 through 2020 Respondent shipped hazardous waste off site from the Facility to a TSDF within the United States.
35. As a generator who ships any hazardous waste off-site to a TSDF within the United States from 2017 through 2020, the Respondent was required to submit a single copy of a Biennial Report to PADEP by March 1, 2020.
36. Respondent did not submit a Biennial Report to the PADEP by March 1, 2020.
37. Respondent’s failure to submit a Biennial Report to PADEP by March 1, 2020 is a violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), and 25 Pa. Code § 262a.41.

Count III
**Failure to Notify the State as a Large Quantity Generator of
Hazardous Waste**

38. The preceding paragraphs are incorporated by reference.
39. 25 Pa. Code § 262a.10, which incorporates by reference 40 CFR § 262.12, and 25 Pa. Code § 262a.12 require that \generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number. 25 Pa. Code § 262a.14 further requires that generator to notify PADEP if the facility class changes.
40. From January 2017 through July 2020, Respondent identified its hazardous waste generator class to PADEP as being “Not A Generator.”
41. From January 2017 through October 2017, Respondent generated hazardous waste at amounts consistent with the Small Quantity Generator (“SQG”) category at the Facility and from November 2017 through July 2020, Respondent generated hazardous waste amounts consistent with the Large Quantity Generator (“LQG”) category at the Facility.
42. From November 2017 through July 2020, Respondent’s failure to notify PADEP of its

actual hazardous waste generator status is a violation of 25 Pa. Code § 262a.12.

Count IV
Failure to Provide Initial and Annual Hazardous Waste Training

43. The preceding paragraphs are incorporated by reference.
43. The regulations at 25 Pa. Code § 264.a1, which incorporate by reference 40 C.F.R. § 264.16(b) and (c), state that Facility personnel must successfully complete an initial training program that includes, among other things, instruction in hazardous waste management procedures, and annually thereafter.
44. The documentation for initial or annual personnel training at the Facility provided by Respondent did not cover initial hazardous waste management or procedures as required by 25 Pa. Code § 264.a1, which incorporate by reference 40 C.F.R. § 264.16(b) and (c).
45. From 2017 through 2020, Respondent's failure to provide initial and annual training for personnel at the Facility for hazardous waste management and procedures is a violation of 25 Pa. Code § 264.a1, which incorporate by reference 40 C.F.R. § 264.16(b) and (c).

CIVIL PENALTY

46. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY THREE THOUSAND TWO HUNDRED DOLLARS (\$43,200.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
47. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in 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 and May 2020 which reflects the statutory penalty factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
48. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2022-0033;
 - b. All checks shall be made payable to the "United States Treasury";

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

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

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

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

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

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

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

49. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
50. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
51. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within sixty (60) 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).

52. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
53. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
54. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

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

CERTIFICATION OF COMPLIANCE

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

OTHER APPLICABLE LAWS

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

RESERVATION OF RIGHTS

59. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

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

EFFECTIVE DATE

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

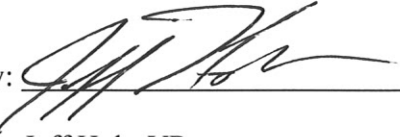
ENTIRE AGREEMENT

62. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In re: Cleveland Brothers Equipment Co., Inc. RCRA-03-2022-0033

For Respondent: Cleveland Brothers Equipment Co., Inc.

Date: 1/10/22

By:  _____

Jeff Holt, VP
Product Support

For the Complainant:

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

Date: _____

By: _____

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

Attorney for Complainant:

Date: _____

By: _____

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

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

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

Date:

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