

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

2018 OCT -3 AM 10:52
REGIONAL HEARINGS
OFFICE

In The Matter of:

Frey Cleaners Inc.

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery Act
as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2017-7107

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”). The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). Since 1986, New York State has been authorized for many hazardous waste requirements promulgated by EPA pursuant to RCRA.

On September 29, 2017, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the “Region”), issued a Complaint and Notice of Opportunity for Hearing (the “Complaint”) to Frey Cleaners Inc. (“Frey” and/or “Respondent”). The Complaint alleged that Frey violated requirements of the authorized New York hazardous waste program. Frey has informed EPA that because of EPA’s enforcement action against the Respondent and prior to entering into this Consent Agreement and Final Order (“CA/FO”), Frey entered a finance lease agreement on December 11, 2017 for one new alternative solvent Innoclean dry-cleaning machine and on May 4, 2018, for one used alternative solvent Innoclean dry-cleaning machine.

The Complainant and Respondent Frey agree, by entering into this CA/FO, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). EPA’s recitation of Findings of Fact and Conclusions of Law below is not intended,

nor is it to be construed, as the Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made in this case.

EPA'S FINDINGS OF FACT CONCLUSIONS OF LAW

1. Respondent is Frey Cleaners Inc.
2. Respondent is a for-profit corporation organized pursuant to the laws of the State of New York in 2008.
3. Respondent owns and operates a solvent-based fabric dry-cleaning ("dry-cleaning") facility located at 926 Nepperhan Avenue in Yonkers, New York (the "Facility").
4. Respondent's business location constitutes a "Facility" as that term is defined in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).
5. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in 6 NYCRR § 370.2(b).
6. Respondent has been and remains the owner and operator of the Facility within the meaning of 6 NYCRR § 370.2(b).
7. Since February 22, 2006, Respondent has operated one "Crown" and two "Greentag" dry-cleaning machines at its Facility.
8. The dry-cleaning machines described in the previous paragraph utilized tetrachloroethylene, alternatively called Perchloroethylene ("Perc"), as the solvent for dry-cleaning at its Facility.
9. Upon information and belief, Respondent, in carrying out its dry-cleaning activities and in the course of conducting normal building maintenance operations has been generating (and continues to generate) "solid waste" (within the meaning of 6 NYCRR § 371.1(c)) at its Facility.
10. In carrying out its dry-cleaning activities, Frey has been generating, and continues to generate, hazardous waste, as defined in 6 NYCRR § 371.1(d), at its Facility.
11. The Perc hazardous wastes generated by the Respondent through its dry-cleaning and related activities at its Facility have included, but are not limited to:
 - a. Perc contaminated waste distillation residues ("Perc sludge");
 - b. spent Perc contaminated lint, button trap and spin disk filter wastes ("Perc lint waste");
 - c. spent Perc contaminated separator wastewater ("Perc separator water"); and
 - d. spent Perc contaminated filter cartridges.

12. The Perc sludge identified in paragraph “11,” above, is a listed hazardous waste (EPA hazardous waste code F002 - spent halogenated solvent) (“F002”) as defined at 6 NYCRR § 371.4(b)(1).
13. The Perc Lint Waste identified in paragraph “11,” above, is a listed hazardous waste (F002), as defined at 6 NYCRR § 371.4(b)(1).
14. The Perc Separator Water identified in paragraph “11,” above, is both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (EPA hazardous waste code (D039) (“D039”) as defined at 6 NYCRR § 371.3(e)(1).
15. The Perc contaminated filter cartridges identified in paragraph “11,” above, are both a listed hazardous waste (F002) and a toxic characteristic hazardous waste (D039) as defined at 6 NYCRR § 371.3(e)(1).
16. Respondent has been a “generator” of “hazardous waste” at its Facility since March 2006.
17. During EPA’s 2014 and 2017 inspections (discussed below), Respondent at its Facility generated less than 1000 kilograms (“kg”) of non-acute hazardous waste in a calendar month and stored less than 6,000 kg of this waste at any one time and was considered a “small quantity generator” (“SQG”) as that phrase is defined in 6 NYCRR § 370.2(b).
18. The requirements for generators are set forth in 6 NYCRR § 372.2. A SQG may accumulate non-acute hazardous waste on-site for one hundred eighty (180) days or less without having a permit or interim status provided it complies with all applicable conditions set forth in 6 NYCRR § 372.2(a)(8) including but not limited to 6 NYCRR § 372.2(a)(8)(iii) - (v).
19. Respondent stores hazardous waste at its Facility for a finite period, at the end of which the hazardous waste is sent off-site where it is treated, disposed of or stored elsewhere.
20. On or about March 8, 2006, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of the Facility (the “2006 Inspection”).
21. During the 2006 Inspection, EPA found several preparedness and prevention violations at the Facility, and EPA informed Frey of such violations.
22. On or about February 27, 2014, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of the Facility (the “2014 Inspection”).
23. On May 5, 2014, EPA issued to Frey a combined Notice of Violation (“2014 NOV”) and Information Request Letter (“2014 IRL”) regarding its Facility and its operations.
24. The 2014 NOV identified the various potential RCRA violations at the Facility.
25. The 2014 IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities at the Facility and required that Respondent submit specific types of documentation relating to hazardous waste activities at its Facility.

26. On or about June 12, 2014, a duly authorized representative of Frey submitted its certified Response to the combined NOV/IRL (“2014 Response”).
27. On or about January 12, 2017, a duly designated representative of EPA conducted a Compliance Evaluation Inspection of the Facility (“2017 Inspection”).
28. On February 7, 2017, EPA issued to Respondent a combined Notice of Violation (“2017 NOV”) and Information Request letter (“2017 IRL”) regarding its Facility and its operations.
29. The 2017 NOV identified various potential RCRA violations at the Facility, many of these violations were similar to those that had been cited in the 2014 NOV.
30. On or about April 3, 2017, Respondent submitted its Response to the 2017 IRL (“2017 Response”).
31. On September 29, 2017, EPA issued a Complaint to the Respondent alleging that in February 2014 and January 2017 and at other times prior to these dates, Respondent had committed the following violations of Subtitle C of RCRA and its implementing regulations:
 - a. storage of hazardous waste at its Facility without obtaining a permit or qualifying for interim status in violation of Section 3005 of the Act, 42 U.S.C. § 6925, and 6 NYCRR § 373-1.2.
 - b. failures by Respondent to maintain or operate its Facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 6 NYCRR §§ 373-3.3(b) or alternatively, 373-2.3(b).
 - c. failure to use manifests when it offered hazardous waste for transport off site from the Facility in violation of 6 NYCRR § 372.2(b)(5)(i).
 - d. failure to submit exception reports, within 45 days to New York State Department of Environmental Conservation (“NYSDEC”) when the Facility later began using manifests but did not receive a signed copy of the manifest back from the designated facility indicating its receipt of the waste shipments in violation of 6 NYCRR § 372.2(c)(3).
32. After the initial settlement discussion and Respondent’s provision of additional information, Complainant dropped the allegation described in paragraph 31(d).
33. Respondent has not yet filed an answer to the Complaint.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the

interest of settling this matter without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies EPA's Findings of Fact and/or EPA's Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) agrees to perform and implement the Supplemental Environmental Project in accordance with the terms and conditions set forth herein; (e) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with the following terms:

1. Respondent shall, to the extent these steps have not yet been taken in accordance with hazardous waste regulatory requirements, come into compliance, as of the effective date of this CA/FO, with the following applicable requirements cited in the Complaint:
 - a. Respondent shall comply in its operations at the Facility with all conditions necessary to be exempt from the requirement to possess a RCRA hazardous waste permit for the temporary storage of hazardous waste, or, failing that, Respondent shall not store hazardous waste at the Facility until it obtains a RCRA permit for such storage of hazardous waste;
 - b. Respondent must maintain or operate its Facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water; and
 - c. Respondent must use manifests when it offers hazardous waste for transport off site from the Facility.
2. Respondent agrees to submit, no later than thirty (30) days after the effective date of the Final Order, a written report documenting its compliance with the applicable hazardous waste requirements cited in the first three counts of the Complaint. If the Respondent is in noncompliance at that time with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the specifically identified requirement(s). If Respondent provides notice of its compliance, it shall certify to such compliance stating that, to the best of its knowledge, Respondent is in compliance with the requirements cited in the first three counts of the Complaint.
3. Respondent shall hereinafter, at its Facility, maintain compliance with regulations that apply to any generation, transport, treatment, storage and disposal of hazardous waste including those cited in Paragraphs 1a. through 1c. above.
4. Respondent shall pay a civil penalty to EPA in the total amount of **SEVEN THOUSAND NINE HUNDRED SEVENTY- FIVE DOLLARS (\$7,975)**, to be paid in accordance with the schedule set forth in paragraph "5," below. Each payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payments are made by check, then the check

shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *In the Matter of Frey Cleaners Inc.*, and shall bear thereon the **Docket Number RCRA-02-2017-7107**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727**
Environmental Protection Agency.
- 6) Name of Respondent: **In the Matter of Frey Cleaners Inc.**
- 7) Case Number: **RCRA-02-2017-7107.**

Each installment payment shall be received (if made by check) or effected (if implemented by EFT) on or before the due dates set forth in subparagraphs 5a-c below.

- a. Failure to pay the requisite civil penalty amount in full according to the due dates set forth below or to pay any stipulated penalty due and owing set forth below, may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if a payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received.
- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
- d. The civil penalty and any stipulated penalties provided for herein *constitute* "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

5. Payments of the civil penalty shall be made as follows:

- a. Respondent shall pay TWO THOUSAND SIX HUNDRED AND FIFTY-NINE DOLLARS (\$2,659.00) within, but not later than, thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the first payment must be received shall hereinafter be referred to as the "due date")
 - b. Within, but no later than, one hundred and eighty (180) calendar days after the due date, Respondent shall pay an additional TWO THOUSAND SIX HUNDRED AND FIFTY-EIGHT DOLLARS (\$2,658.00).
 - c. Within, but no later than, three hundred (300) calendar days after the due date, Respondent shall pay an additional TWO THOUSAND SIX HUNDRED AND FIFTY-EIGHT DOLLARS (\$2,658.00).
 - d. Each payment shall be made in accordance with the instructions set forth in paragraph 4 of this section, above.
6. If Respondent fails to make any of the above installment payments according to the terms and schedule set forth in this section, Respondent shall, in addition to any other penalties provided for herein, pay a stipulated penalty of TWO HUNDRED DOLLARS (\$200.00) for each installment penalty payment that is paid late or not paid in full. Respondent shall be responsible for any stipulated penalty that becomes due. Respondent shall follow the payment instructions set out in the paragraph 4, above of this section for any stipulated penalty to be paid. If Respondent, in writing demonstrates good cause for its failure to make timely payment in accordance with the specifications set forth herein, the EPA may, in its discretion, excuse Respondent from payment of a stipulated penalty.
 7. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
 8. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste at or from the Facility.
 9. Except as provided in paragraph 4 for the payment of the civil penalty and any stipulated penalty that may come due, (and except as the parties may otherwise in writing later agree), all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to :

Ron Voelkel
Environmental Scientist
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency

290 Broadway, 21st Floor
New York, New York 10007

and

Jeannie M. Yu
Assistant Regional Counsel Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

EPA shall address any written communications to Respondent at the following address:

Kyung Kwon
Frey Cleaners Inc.
926 Nepperhan Avenue
Yonkers, New York 10703

Each party may, upon written notice to the other party, change the name and address of its contacts.

Supplemental Environmental Project

10. Respondent agrees to perform a Supplemental Environmental Project (“SEP”). The parties have agreed to the scope and requirements of the SEP and have determined that Respondent shall expend not less than SIXTY THOUSAND DOLLARS (\$60,000) (the “SEP cost”) on approved SEP-specific activities as outlined below in Paragraph 12.a. through 12.d., below.
11. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth in paragraphs “12” and “13” below, of this CA/FO. Any later proposed changes to this SEP must be approved by EPA in writing in advance.
12. The SEP will consist of five parts, each one set forth in the sub-paragraphs below:
 - a. Respondent will “finance lease” one alternative solvent Innoclean, 90 pounds, AC900-Multi-1 commercial dry-cleaning machine (“New Innoclean”.) Respondent has informed EPA that the term of such lease is for 60 months and contains an end of lease provision of “mandatory purchase.” Frey shall properly install and operate such dry-cleaning machine at the Facility.
 - b. Frey shall use the following alternative dry-cleaning solvents approved by NYSDEC with its three Innoclean dry-cleaning machines (which includes the New Innoclean and the two other Innoclean machines for which Respondent entered into a finance lease arrangement prior to issuance of this CA/FO):

1. Green Earth[®] (SB-32): decamethylcyclopentasiloxane by General Electric.
 2. ExxonMobil DF-2000¹: synthetic hydrocarbon.
 3. Chevron Philips EcoSolv[®]: highly refined hydrocarbon.
 4. Rynex 3[™]: dipropylene glycol tert-butyl ether.
 5. Sasol (LPA-142)¹: highly refined hydrocarbon.
 6. R.R. Streets Solvair^{™2}: dipropylene glycol n-butyl ether (DPGnBE).
 7. SolvonK4[™]: dibutoxymethane by Kreussler.
 8. Green Earth[®] GEC-5: decamethylcyclopentasiloxane by Shin-Etsu.
 9. DC-142: aliphatic hydrocarbon solvent by Essential Solvent.
 10. Any other alternative solvents approved by NYSDEC and posted on its “Approved Alternative Solvents for Dry Cleaning¹” website.
- c. Respondent shall obtain any required NYSDEC Air registration or permit and operate the New Innoclean at its Facility for a minimum period of three (3) years.
- d. No later than one (1) year from the effective date of this CA/FO, Respondent shall arrange for and properly dispose of, in accordance with the requirements of applicable law any remaining Perc-contaminated dry-cleaning machines, at the Facility. Respondent shall also provide by the same deadline for the proper disposition of any other remaining Perc under its control. Prior to making any such arrangements, Respondent shall contact and seek approval for its plans for disposal from Ronald Voelkel, whose address is listed in paragraph “9” of this section, above.
- e. Unless otherwise approved by EPA in writing, Respondent shall, no later than one (1) year from the effective date of this CA/FO, at the Facility cease all use of (or operations with) Perc and/or any other solvents (including chlorinated solvents) that, when spent, would likely constitute a “hazardous waste” (as defined in Section 1004(5) of the Act, 42 U.S.C. § 6903(27), and 6 NYCRR Part 371.1(d)). Such solvents would include, but are not limited to, hydrocarbon solvents with a flash point less than 140°F / 60°C.

13. Respondent shall comply with the following terms and the schedule for the Innocleans:

¹ See New York State Department of Environmental Conservation’s “Approved Alternative Solvents for Dry Cleaning” at <https://www.dec.ny.gov/chemical/72273.html>.

#	Activity	Milestone
a.	Receive, install, and commence operation of one New Innoclean.	No later than 90 days of the effective date of the CA/FO.
b.	Respondent shall comply with <i>all</i> applicable rules and regulations of the Yonkers Fire Department necessary to legally install and operate the New Innoclean including: making such modifications to the Facility as needed to meet Fire Code requirements, receiving Fire Code/Fire Service permits, providing the fire department with the installation plans of its Innoclean; and notifying the fire department of the dry-cleaning solvent(s) that will be used in their Innocleans at the Facility.	No later than 90 days of the effective date of the CA/FO.
c.	Obtain any required NYSDEC Air Registration or permit and arrange for all applicable building and/or commercial business inspections, permits, and other activities as needed to meet applicable local rules and regulations for the installation and operation of its new Innoclean.	No later than 90 days of the effective date of the CA/FO.
d.	Operate at least one New Innoclean.	For at least 3 years starting not later than 6 months from the effective date of the CA/FO.

14. The Director of the Division of Enforcement and Compliance Assistance (“DECA”) may grant an extension of the date(s) of performance in paragraph “13” or such other dates as are established in this CA/FO, where there is good cause for such extension. If Respondent submits a request for extension, such request shall be submitted to EPA (using same contacts and addresses listed in paragraph “9” of this section, above) no later than 14 days prior to any milestone set forth in the schedule in paragraph "13" of this section, above, or such other dates as are established in this CA/FO.
15. If Respondent believes it needs additional time to meet any milestone set forth in paragraph “13” of this section, above, Respondent shall write to EPA, Region 2, to state the grounds for its belief with any supporting documentation and shall set forth how much additional time it reasonably believes is required. Based on Respondent's written submissions, EPA, Region 2,

will, in its sole discretion, determine whether additional time is warranted. Should EPA have any concerns about Respondent's request for additional time, EPA will communicate with Respondent and provide it with an opportunity to discuss its request.

16. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding, and this CA/FO in no way limits Complainant's right to initiate any action against the Respondent regarding any statutory or regulatory violation(s) except as provided in this Consent Agreement.
17. Respondent shall not use or expend any money received from the federal or state government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

Certifications related to SEP and Financial Condition

18. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, that:
 - a. all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and Respondent in good faith estimates that the cost to implement the SEP is at least \$60,000;
 - b. Respondent is not required to perform the aforementioned SEP pursuant to any federal, state or local law, regulation;
 - c. Respondent is not required to perform or develop the SEP as set forth herein by any agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - d. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved herein;
 - e. Respondent has not received and will not receive credit in any other enforcement action for the actions that constitute the SEP; and
 - f. Respondent will not receive reimbursement for any portion of the SEP from any person or entity.
19. Respondent further certifies that, to the best of *its* knowledge and belief after reasonable inquiry, there is no open federal financial transaction that could fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.
20. Respondent further certifies that it has not and agrees that it will not capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP for federal income tax purposes.

21. Respondent further certifies that Respondent has requested of EPA that payment of the \$7,975 civil penalty be in installments because of the financial condition of Respondent, viz. a one-time payment of said amount would constitute a hardship for Respondent because of the company's cash flow timing as a result of monthly finance payments for three Innoclean dry-cleaning machines and the overall financial circumstances of Respondent at the time of execution of the consent agreement.
22. Respondent hereby certifies that:
- The financial information and documentation it submitted to EPA on June 28, 2018, is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Respondent is aware that EPA retains the right to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation and/or representations made to EPA regarding Respondent's current financial condition are false or, in any material respect, inaccurate.
23. If at any time, EPA believes that any of the information certified to herein (including but not limited to certifications made pursuant Paragraphs 18 – 22, 30, & 53) is inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA within twenty (20) days of EPA's notification. After review of any comments submitted, EPA shall provide a written statement of its initial decision to Respondent. This initial decision shall be final and binding upon Respondent unless Respondent requests, within 20 days of its receipt of the initial decision, review of the decision by a more senior EPA regional official (at the Branch Chief level or higher) After such review, EPA will issue a final decision, which decision shall be final and binding upon Respondent. Respondent agrees that a substantially or materially inaccurate certification shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 41 below. Such payment(s) shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.
24. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted, related to or pursuant to this Consent Agreement.

SEP Reporting

25. Within sixty (60) days after Respondent has completed the first three steps of the SEP set forth in paragraph "13" of this section, above, and has operated the New Innoclean for a month, Respondent shall submit a SEP Installation Report to Ron Voelkel at the address identified in paragraph "9" of this section, above. The SEP Installation Report shall provide the following information:

- a. a review in detail of all actions taken as of that date to implement the SEP;
 - b. evidence of SEP installation, which may include but is not limited to, photos of the equipment, vendor invoices or receipts, correspondence from the vendor;
 - c. identification of any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discussion of how any such issues or problems were addressed, and the solutions thereto;
 - d. quantification to the extent possible of the projected benefits associated with the project and a statement setting forth how the benefits were measured or estimated; and
 - e. documentation of all costs expended as of that date by Respondent on the SEP.
26. Respondent shall submit to EPA an Operation Report within twelve (12) months of the date of installation of the New Innoclean. A second Operation Report shall be submitted to EPA within twelve (12) months of the date when the first report is due. The Operation Report will focus on the operation of the equipment installed as part of the SEP and the dry-cleaning solvents used by the Facility. The Operation Report shall include (i) appropriate documentation demonstrating the way the equipment is maintained, as well as the type and the volume of clothing cleaned by the equipment on a monthly basis and (ii) the type and amount of dry-cleaning solvent used on a monthly basis. The Operation Report required pursuant to this paragraph shall be submitted to Ron Voelkel at the address identified in Paragraph 9, above.
27. Within sixty (60) days after Respondent has completed the three steps of the SEP set forth in paragraph "13" of this section, above, and has operated the New Innoclean for at least three years, and has expended at least the SEP cost (*i.e.* \$60,000) on SEP-specific activities, Respondent shall submit a SEP Completion Report to Ron Voelkel at the address identified in paragraph "9" of this section, above. The SEP Completion Report shall provide the following information:
- a. a review in detail of all actions taken to implement the SEP;
 - b. summary of the quantities and nature of all fabric-cleaning solvents purchased and used at the Facility, and any supporting documentation not already submitted to EPA;
 - c. identification of any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discussion of how any such issues or problems were addressed;
 - d. quantification to the extent possible of the benefits associated with the project and a statement setting forth how the benefits were measured or estimated; and
 - e. documentation of all costs expended by Respondent on the SEP, including vendor invoices, or receipts, and correspondence from the vendor.

28. Following receipt of the SEP Completion Report described in the previous paragraph, EPA will either (i) accept the SEP Completion Report and issue a Notice of Acceptance; or (ii) reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (at a minimum 15 days), in which to correct any deficiencies in the SEP Completion Report; or (iii) reject the SEP Completion Report and find Respondent in violation of this CA/FO. If granted time to correct identified deficiencies in accordance with subsection (ii), Respondent shall do so and resubmit the SEP Completion Report to EPA in a timely manner. If Respondent fails to establish in the SEP Completion Report that its expenditures are eligible to be credited toward the SEP cost, it shall resubmit the SEP Completion Report when it has operated the Innocleans for a longer time period and has incurred additional expenses that are eligible to be credited to satisfy the SEP cost (*i.e.* \$60,00).
29. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely efforts to implement the SEP, whether Respondent has complied with all the terms of the CA/FO and whether expenditures are creditable toward the SEP cost shall be in the sole discretion of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate in writing those concerns to Respondent and provide it with an opportunity to respond.
30. In all documents or reports, including without limitation, the SEP Installation Report, Operation Reports, and SEP Completion Report submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate and not misleading by 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 potential penalties for knowingly submitting materially false information, including the possibility of fines and imprisonment.”
31. All documents submitted to EPA shall be in a form mutually agreeable to both parties (*e.g.* by electronic mail in Microsoft Word or Portable Document Format [.pdf] format).
32. Respondent agrees that failure to submit a report required by this Consent Agreement in a timely manner (except as provided for in Paragraphs “14” above and “33” below) shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 41 below.
33. Delays:
- a. If any unforeseen event occurs which causes or may cause delays in the implementation of the SEP or the submission of a report as required herein,

Respondent shall notify EPA in writing within (14) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the implementation of the SEP or the submission of a required report caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in the implementation of the SEP or the submission of a report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder will be extended for a period no longer than the delay resulting from such circumstances.
 - c. If EPA does not agree that a delay in implementing the SEP or submitting the report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in implementation of the SEP or the submission of a report shall not be excused.
 - d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
34. Respondent agrees to make the alternative solvent-cleaning machine available at reasonable times for viewing by other interested persons engaged in the dry-cleaning and laundry industry. Respondent also agrees to cooperate with EPA in any efforts to publicize its use of the machine and to provide information about the machine to those seeking to utilize an alternative solvent dry-cleaning machine.
35. Respondent agrees that following notice to Frey, EPA may contact its vendor at any time, after the SEP has been alleged to have been completed in order to confirm details about the SEP or *its* costs. The provisions of this paragraph shall remain in effect from the Effective Date of this CA/FO until one (1) year after EPA acceptance of the SEP Completion Report.
36. Any public statement, oral or written, *in* print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken *in* connection *with* the settlement of an enforcement action initiated by the U.S. Environmental Protection Agency against the Frey Cleaners Inc., under the Resource Conservation and Recovery Act."
37. Respondent grants EPA and its authorized representatives access to inspect during reasonable business hours the Facility and any other location where the files and/or records related to the SEP are maintained (as more fully set forth in paragraph "38" of this section, below), in order

to confirm that the SEP is being performed satisfactorily and in conformity with the requirements herein and any representations made to EPA. Nothing in this paragraph or in this CA/FO is intended or is to be construed to limit or otherwise affect EPA's authority to perform inspections or take appropriate action pursuant to applicable statutory and/or regulatory authority.

38. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the SEP Installation Report, Operation reports, and SEP Completion Report required pursuant to paragraphs "25," through "27" of this section, above. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within 10 days of Respondent's receipt of a request by EPA for such information, or within such additional time as is approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five years from the effective date of this CA/FO or from three years from the date EPA issues the Notice of Acceptance for the SEP Completion Report as described in paragraph "28" of this section, above, whichever is later.

Stipulated penalties

39. In the event Respondent fails to undertake good faith efforts to install and start operating the New Innoclean within 6 months of the required deadline set forth in paragraph "13" of this section, above, or within three months of any extensions of such deadline granted by EPA, Region 2, Respondent shall be liable for a stipulated penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00).
40. If Respondent performs all of the steps outlined in paragraph "13" of this section, above, to implement the SEP and fails within sixty- six months of the effective date of the CA/FO to satisfy the requirements to expend the full SEP Cost on the SEP as determined by EPA, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

If Respondent: a) has operated the New Innoclean for three years and made good faith efforts to satisfy the SEP Cost requirements; and b) certifies and demonstrates to EPA's satisfaction, with adequate supporting documentation, that it has spent at least \$54,000 in creditable SEP expenditures; and EPA a) agrees there were good faith efforts; and b) accepts such certification, then Respondent shall not pay any stipulated penalty for failure to satisfy the SEP cost requirement. If EPA determines that Respondent has not spent \$54,000 in creditable SEP expenditures, then Respondent shall pay a stipulated penalty in an amount that is two times the amount EPA determines is deficient (i.e., the difference between the required SEP Cost and the amount EPA determines was properly expended on SEP eligible SEP expenditures).

41. If EPA determines that Respondent is liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the Consent Agreement. Except as provided in Paragraph

“39,” above, stipulated penalties shall accrue per day per violation for the following time periods, and noncompliance with the following types of matters:

- a. failure to submit in a timely manner the SEP Installation Report or failure to include the required information in the SEP Installation Report pursuant to paragraph “25”, above;
- b. failure to submit in a timely manner an Operations Report or failure to include required information in an Operations Report pursuant to paragraph “26,” above;
- c. failure to submit in a timely manner the SEP Completion Report or failure to include the required information in the SEP Completion Report pursuant to paragraph “27”, above;
- d. failure to revise any documents on schedule following receipt of EPA comments pursuant to paragraph “28,” above;
- e. failure to include the required public statement in “36”, below or certification pursuant to paragraph “30,” above;
- f. failure to provide access to EPA and its authorized representatives to inspect the location where the New Innoclean has been installed and is being operated as required by paragraph “37,”
- g. failure to share information and allow viewing of the Innocleans and alternative solvents with other interested persons engaged in the dry cleaning and laundry business pursuant to paragraph ”34”; and/or
- h. failure to grant EPA and its authorized representatives access to and/or provide records pursuant to paragraph “37 & 38,” above.

STIPULATED PENALTY AMOUNTS

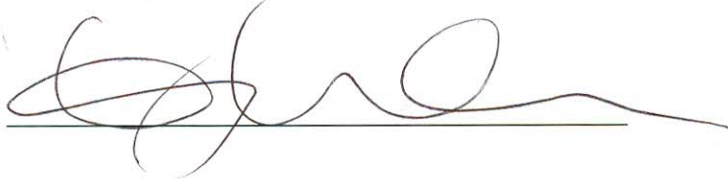
<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1 st to 20 th day	\$250
21 st to 60 th	\$500
Each day in excess of 60 days	\$1,000

42. Unless Respondent provides EPA with a writing pursuant to Paragraph “43,” below, all stipulated penalties are due and payable within forty-five (45) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent at the address in Paragraph 9, above. All stipulated penalty payments shall be made in accordance with payment instructions in Paragraph “4,” above. Penalties shall accrue as provided above regardless of whether EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand.

43. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have thirty (30) calendar days in which to provide EPA with a written explanation of why Respondent believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).
44. Failure of Respondent to pay any stipulated penalty due and owing pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.
45. The Director of DECA, Region 2 may, in his/her sole discretion (or in the sole discretion of someone delegated to act on his/her behalf), reduce or eliminate any stipulated penalty set forth in this CA/FO that is otherwise due. In addition, the Director may reduce or eliminate any stipulated penalty provided Respondent has in writing demonstrated to EPA, Region 2' s satisfaction good cause for such action by EPA. If, after review of Respondent's written submission seeking a reduction or elimination of stipulated penalties, the Director (or her delegate) determines that Respondent failed to comply with the provisions of this CA/FO, and the Director (or her delegate) does not eliminate the stipulated penalties demanded by EPA, the Director (or her delegate) will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid. Respondent shall then pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of receipt of such written notice from EPA.
46. By executing this Consent Agreement, Respondent hereby waives its right to seek or to obtain any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
47. Respondent consents to service of a copy of this CA/FO upon Respondent by an EPA employee other than the Regional Hearing Clerk.
48. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
49. This Consent Agreement is *being* voluntarily and knowingly entered into by the parties. Full payment of the penalty described in paragraph 4, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
50. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

51. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
52. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, officers, agents, authorized representatives and any successor entity that may assume the Respondent's obligations.
53. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she *is* duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement.
54. Each party hereto shall bear its own costs and fees in this matter.
55. Pursuant to 40 C.F.R. §22.31(b), the Effective Date of this Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

FREY CLEANERS INC.

BY: _____

Authorizing Signature

NAME: KYUNG Kwon
(PLEASE PRINT)

TITLE: VP

DATE: 8/20/18

In the Matter of Frey Cleaners Inc., Docket Number RCRA-02-02-2017-7107

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**

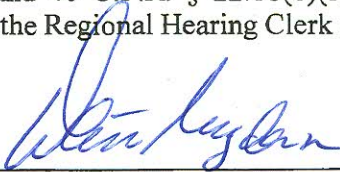


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: SEPTEMBER 4, 2018

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

for 

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: Sept. 27, 2018

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Kyung Kwon
Frey Cleaners Inc.
926 Nepperhan Avenue
Yonkers, New York 10703

Dated: Oct. 3, 2018

