



3. The 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, June 1, 2001 (66 Fed. Reg. 29712) effective July 31, 2001, and July 26, 2004 (69 Fed. Reg. 44463) effective 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).

### **I. GENERAL PROVISIONS**

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement.
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 4, above.
6. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

### **Notice of Action to the State of Maryland**

10. By letter to Brian Coblenz, Chief, Solid Waste Program, Maryland Department of the Environment ("MDE"), dated August 8, 2016, EPA has given the State of Maryland, through MDE, prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
11. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a

specified time period, or both.

12. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CAFO, issued pursuant to 40 C.F.R. § 22.18(b)(2) and (3), simultaneously commence and conclude an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA at Respondent's Facility.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
14. Respondent, Independent Can Company, is a Maryland corporation and is a "person" as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).
15. Respondent is and has been, through the period of the violations alleged herein, the "owner" and "operator" of a "facility" located at 1300 Brass Mill Road, Belcamp, Maryland as these terms are defined by COMAR 26.13.01.03B(59), (58) and (23). Such facility is hereinafter referred to as the "Facility".
16. Respondent is and has been, through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Facility as those terms are defined by COMAR 26.13.01.03B(29), (76), (73), and (31).
17. Respondent is and, at all times relevant to the violations in this CAFO has been, a generator more than 1000 kilograms of hazardous waste in a calendar month (hereinafter "large quantity generator"). Respondent is assigned EPA ID No. MDD985412253.
18. On May 3, 2016, EPA representatives conducted a Compliance Evaluation Inspection ("CEI") of the Facility.
19. At the time of the inspection, and, at all times relevant to the violations in this CAFO, Respondent generated waste solvents (EPA Hazardous Waste Number D001) at the Facility. Waste solvents are hazardous waste within the meaning of COMAR 26.13.02.11 because waste solvents exhibit the characteristic of ignitability.

20. At the time of the inspection, and, at all times relevant to the violations in this CAFO, Respondent generated waste lamps containing mercury (EPA Hazardous Waste Number D009) at the Facility. Waste solvents are hazardous waste within the meaning of COMAR 26.13.02.11 because waste solvents exhibit the characteristic of toxicity.

### COUNT I

(Operating a Treatment, Storage or Disposal Facility Without a Permit or Interim Status)

21. The preceding paragraphs are incorporated by reference.
22. 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 here, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.
23. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, “interim status”) until such time as final administrative disposition of such application is made.
24. Respondent has never had “interim status” pursuant to RCRA Section 3005(e) or a permit issued pursuant to RCRA Section 3005(a) for the treatment, storage, or disposal of hazardous waste at the Facility.
25. Pursuant to COMAR 26.13.03.05E, large quantity 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, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
- a. Pursuant to COMAR 26.13.03.05E(1)(d), the generator must comply with the requirements of COMAR 26.13.05.09, including:
- (i) The requirement to keep containers holding hazardous waste always closed during storage, except when necessary to add or remove waste, in accordance with COMAR 26.13.05.09D; and,

(ii) The requirement to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors, in accordance with COMAR 26.13.05.09E.

b. Pursuant to COMAR 26.13.03.05E(1)(e), the generator must clearly mark each container with the date upon which each period of accumulation begins so that the mark is visible for inspection on each container; and,

c. Pursuant to COMAR 26.13.03.05E(1)(f), while being accumulated in containers on site, the generator must label or mark each container with the words "Hazardous Waste," and,

d. Pursuant to COMAR 26.13.03.05E(1)(g), the generator must comply with the requirements of COMAR 26.13.05.02G, .03, and .04, including the requirements that:

(i) Facility personnel take part in an annual review of the initial hazardous waste management training required by COMAR 26.13.05.02G(1)(a) in accordance with COMAR 26.13.05.02G(3); and

(ii) The owner or operator maintain at the facility a written job description for each position related to hazardous waste management in accordance with COMAR 26.13.05.02G(4)(b); and

(iii) The owner or operator maintain at the facility records that document the training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) has been given to, and completed by, facility personnel in accordance with COMAR 26.13.05.02G(4)(d) and

(iv) Each owner or operator have a contingency plan for his facility, in accordance with COMAR 26.13.05.04.

26. Pursuant to COMAR 26.13.03.05E(3)(b), the generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous waste listed in COMAR 26.13.02.19E in containers in a satellite accumulation area at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with COMAR 26.13.03.05E(1), provided the satellite containers are marked with the words "Hazardous Waste" or other words to identify the contents of the containers in accordance with COMAR 26.13.03.05E(3)(b).

27. Respondent did not qualify for the permit exemptions specified under COMAR 26.13.03.05E(1) and (3) with respect to the on-site storage of the hazardous waste at the Facility because it failed to meet applicable permit exemption conditions for each of the following reasons:

a. At the time of the May 3, 2016 CEI, Respondent stored hazardous waste in containers that were open when not adding or removing waste, in contravention of COMAR 26.13.03.05E(1)(d), specifically;

- (i) One 55-gallon drum in the waste solvent room at the Facility;
- (ii) A metal step can containing solvent-contaminated rags at the Facility;
- (iii) A 55-gallon slop drum of waste solvent in a room called the “the P3 room” at the Facility;
- (iv) A 55-gallon slop drum of waste solvent in a room called the “the P4 room” at the Facility;
- (v) A container of solvent-contaminated wipes located near Printer 3 at the Facility; and,
- (vi) Two waste lamps containing mercury were not stored in containers.

b. From May 17, 2013 to May 28, 2013, June 19, 2015 to July 6, 2015, December 15, 2015 to December 30, 2015 and March 18, 2016 to April 1, 2016, Respondent did not inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors, in contravention of COMAR 26.13.05.09E and the permit exemption requirements of COMAR 26.13.03.05E(1)(d).

c. At the time of the May 3, 2016 CEI, Respondent did not clearly mark two 55-gallon containers in the hazardous waste storage area, and a container of waste lamps containing mercury with the date upon which each period of accumulation begins so that the mark is visible for inspection on each container in contravention of the permit condition exemption conditions of COMAR 26.13.03.05E(1)(e), specifically,

d. At the time of the May 3, 2016 CEI, Respondent did not label or mark each container of hazardous waste with the words “Hazardous Waste,” in contravention of the permit condition exemption conditions of COMAR 26.13.03.05E(1)(f), specifically:

- (i) One 55-gallon drum in the hazardous waste storage area at the Facility;

- (ii) A metal step can containing solvent contaminated rags at the Facility; and
  - (iii). Containers used to store waste lamps containing mercury.
- e. From at least January 1, 2011 to December 31, 2015, Facility personnel did not take part in an annual review of the initial hazardous waste management training in contravention of COMAR 26.13.05.02G(1)(a), which references COMAR 26.13.05.02G(3) and the permit exemption requirements of COMAR 26.13.03.05E(1)(g).
- f. From January 1, 2011 to December 31, 2015, Respondent did not maintain at the facility a written job description for each position related to hazardous waste management in contravention of COMAR 26.13.05.02G(4)(b) and the permit exemption requirements of COMAR 26.13.03.05E(1)(g).
- g. From January 1, 2011 to December 31, 2015, Respondent did not maintain at the facility records that document the training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) has been given to, and completed by, Facility personnel in contravention of COMAR 26.13.05.02G(4)(d) and the permit exemption requirements of COMAR 26.13.03.05E(1)(g).
- h. At the time of the May 3, 2016 CEI, Respondent did not have a Facility contingency plan which listed all of the required contact information for the emergency coordinator and that included an evacuation plan, in contravention of COMAR 26.13.05.04C(4) and (6) and the permit exemption requirements of COMAR 26.13.03.05E(1)(g).
28. At the time of the May 3, 2016 CEI, Respondent accumulated hazardous waste in satellite accumulation areas without marking containers used for satellite accumulation with the words: "Hazardous Waste" or with other words that identified the contents of that container as required by COMAR 26.13.03.05E(3)(b) or as otherwise required by COMAR 26.13.03.05E(1)(f)(ii); specifically, a metal step can used to collect solvent-contaminated wipes located in the P3 room at the Facility.
29. For the reasons and during the times set forth above at the Facility, Respondent failed to comply with the conditions for the temporary storage (*i.e.*, 90 days or less) of hazardous waste by a generator that are required pursuant to COMAR 26.13.03.05E, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
30. Respondent's Facility is a hazardous waste treatment, storage or disposal "facility" as that term is defined in COMAR 26.13.01.03B(23), with respect to the storage of hazardous waste as described above.

31. From at least January 1, 2011 until May 3, 2016, and for each of the reasons and on each of the dates set forth in Paragraphs 27(a) – (h), and 28, above, Respondent did not meet the requirements for a permit exemption under COMAR 26.13.03.05E and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility (i.e., the Facility) without a permit or interim status.

### **COUNT II**

(Failure to Make Hazardous Waste Determinations)

32. The preceding paragraphs are incorporated by reference.
33. COMAR 26.13.03.02 requires that a person who generates a solid waste shall determine if that waste is a hazardous waste using the method set forth in COMAR 26.13.02.02A(1) – (3).
34. At the time of the May 3, 2016 CEI, Respondent did not perform hazardous waste determinations on spent aerosol cans which therefore became solid waste within the meaning and definition of COMAR 26.13.01.03B(73) and COMAR 26.13.02.02, without first determining if this material was hazardous waste, as required by COMAR 26.13.03.02.
35. On May 3, 2016, Respondent violated COMAR 26.13.03.02 by failing to perform hazardous waste determinations on solid waste generated at the Facility.

### **COUNT III**

(Manifest Copies)

36. The preceding paragraphs are incorporated by reference.
37. COMAR 26.13.03.06 A(1) requires a generator to keep a copy of each manifest signed in accordance with COMAR 26.13.03.04A(1) for three years or until he receives a signed copy from the designated facility which received the waste.
38. At the time of the May 3, 2016 CEI, Respondent did not have signed, returned copies from the destination facility for manifest numbers 003895595FLE, 003895694FLE, 006088768JJK, 003895965FLE, and 003896978FLE.
39. On May 3, 2016, Respondent violated COMAR 26.13.03.06 A(1) by failing to keep a copy of each manifest signed in accordance with COMAR 26.13.03.04A(1) for three years or until Respondent received a signed copy from the designated facility which received the waste.



**COUNT IV**  
(Biennial Reports)

40. The preceding paragraphs are incorporated by reference.
41. COMAR 26.13.03.06B(1)(b)(ii) and (c)(ii) requires a person who generates hazardous waste and ships it off-site to a facility within the United States to submit a report by March 1 of each even numbered year for the preceding calendar year to the Secretary of the MDE biennially beginning January 1, 1997.
42. Respondent submitted the biennial report due on March 1, 2012 on May 20, 2013, 445 days past the due date for submission of the biennial report due on March 1, 2012.
43. Respondent submitted the biennial report due on March 1, 2016 on May 27, 2016, 87 days past the due date for submission of the biennial report due on March 1, 2016.
44. From March 2, 2012 through and including May 20, 2013 and from March 2, 2016 through and including May 27, 2016, Respondent violated COMAR 26.13.03.06B(1)(b)(ii) and (c)(ii) by failing to submit biennial reports due March 1, 2012 and March 1, 2016 by the due date for such biennial reports.

**COUNT V**  
(RCRA Training)

44. The preceding paragraphs are incorporated by reference.
45. COMAR 26.13.05.02G(1)(a) and (c) requires that facility personnel receive hazardous waste management training that teaches the employees to perform their duties in a way that ensures compliance with the MdHWMR, and at a minimum is designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems
46. From May 3, 2011 through and including May 3, 2016, Respondent did not provide the RCRA training required by COMAR 26.13.05.02G(1)(a).
47. From May 3, 2011 through and including May 3, 2016, Respondent violated COMAR 26.13.05.02G(1)(a) and (c) by failing to provide hazardous waste management training that teaches the employees to perform their duties in a way that ensures compliance with the MdHWMR, and at a minimum is designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems

**COUNT VI**  
(Job Descriptions)

48. The preceding paragraphs are incorporated by reference.
49. COMAR 26.13.05.02G(4)(a) – (c) requires the owner or operator to maintain the following documents and records at the facility:
- a. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
  - b. A written job description for each position listed under COMAR 26.13.05.02G(4)(a).
  - c. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed in COMAR 26.13.05.02G(4)(a).
50. From at least May 3, 2011 until May 3, 2016, Respondent's documents and records at the Facility did not list the job title for each position related to hazardous waste management in documents and records maintained at the Facility as required by COMAR 26.13.05.02G(4)(a).
51. From at least May 3, 2011 until May 3, 2016, Respondent violated COMAR 26.13.05.02G(4)(a) by failing to list the job title for each position related to hazardous waste management in documents and records maintained at the Facility.

**COUNT VII**  
(Contingency Plan)

52. The preceding paragraphs are incorporated by reference.
53. COMAR 26.13.05.04C requires owners and operators to maintain a contingency plan for their facility that includes, among other things, the names and addresses of the facility emergency coordinators as required by COMAR 26.13.05.04C(4).
54. At the time of the May 3, 2016 CEI, the Facility Contingency Plan did not list the addresses and phone numbers for the Facility emergency coordinators.
55. On May 3, 2016, Respondent violated COMAR 26.13.05.04C by failing to list the names and addresses of the facility emergency coordinators in the Facility Contingency Plan as required by COMAR 26.13.05.04C(4).

### COUNT VIII

(Failure to conduct weekly inspections of Hazardous Waste Storage Area)

56. The preceding paragraphs are incorporated by reference.
57. COMAR 26.13.05.09(E) requires the owner or operator of a hazardous waste facility to inspect areas where hazardous waste containers are stored, at least weekly, to look for leaks and for deterioration of the containers and the containment system caused by corrosion or other factors.
58. From May 17, 2013 to May 28, 2013, June 19, 2015 to July 6, 2015, December 15, 2015 to December 30, 2015 and March 18, 2016 to April 1, 2016, Respondent did not inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors.
59. From May 17, 2013 to May 28, 2013, June 19, 2015 to July 6, 2015, December 15, 2015 to December 30, 2015 and March 18, 2016 to April 1, 2016, Respondent violated COMAR 26.13.05.09(E), by failing to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors.

### III. CIVIL PENALTIES

60. Respondent agrees to pay a civil penalty in the amount of THIRTY-THREE THOUSAND ONE HUNDRED NINETY-FIVE (\$33,195.00) in settlement of the alleged violations set forth in this CAFO, 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 copy of the executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.

61. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.

62. Respondent shall remit the full penalty pursuant to paragraph 60, above, and/or any administrative fees and late payment penalties, by cashier's check, certified check or electronic wire transfer, in the following manner:

A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2017-0126;

B. All checks shall be made payable to "United States Treasury";

C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Craig Steffen 513-487-2091

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1818

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

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

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

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

- G. On-Line Payment Option: WWW.PAY.GOV/PAYGOV

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

- H. Point of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):

Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

Additional payment guidance is available at:

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

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

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

and

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

64. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO.
65. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
66. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent. 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).
67. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

68. The following Supplemental Environmental Project (“SEP”) is consistent with applicable EPA policy and guidelines, including EPA’s *Supplemental Environmental Projects Policy*, effective March 10, 2015.
69. Respondent agrees to implement a comprehensive Compliance Focused Environmental Management System (“CFEMS”) consistent with the EPA Guidance entitled: *Compliance-Focused Environmental Management System-Enforcement Agreement Guidance*, revised June 2005 at the Independent Can Company facilities located in: Belcamp, Maryland, Rosedale, Maryland, Tolleson, Arizona, Vandalia, Ohio, Conneaut, Ohio and Fort Madison, Iowa.
70. The contents of Respondent’s CFEMS will include, at a minimum, the following elements:
- a) A corporate environmental policy statement;
  - b) A description of personnel, personnel assignments and responsibilities related to the implementation of the CFEMS;
  - c) Information regarding accountability and responsibilities related to risk reduction and environmental protection for managers, on-site providers and contractors;
  - d) Methods for identifying, interpreting, and effectively communicating environmental requirements to affected personnel, on-site providers and contractors;
  - e) Procedures for ongoing assessment of operations for the purposes of preventing and controlling or minimizing reasonably foreseeable releases and to ensure environmental protection and compliance with statutory and regulatory requirements;
  - f) Procedures for internal and external reporting of potential violations and release incidents. These procedures will include provisions for investigations, prompt and appropriate corrective action, and a system for tracking effectiveness of corrective and preventive actions;
  - g) A comprehensive environmental training program for employees that will identify and include methods to verify the competence of employees within the CFEMS;

- h) Procedures for integrating environmental planning into organization decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities as appropriate;
- i) Comprehensive environmental document control procedures identifying the types of documents to be maintained, responsibilities for maintaining documents, identifying where documents are to be maintained, and measures to prevent unauthorized disclosure and protocols for responding to inquiries and requests to release information;
- j) Procedures for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions where appropriate;
- k) Procedures for periodic evaluation of the CFEMS and incorporating the results of periodic assessments into program improvements, revisions to the manual, and communicating findings and action plans to affected employees, on-site service providers and contractors; and,
- l) Procedures for ongoing community education and involvement related to the environmental aspects of the Facility's operations and general environmental awareness.

71. The CFEMS SEP shall be implemented by an independent third party auditor (herein "Auditor") selected and retained by Respondent to perform the following CFEMS SEP Tasks as follows:

- a) Task One: Review and Evaluation: The Auditor shall conduct an initial review of the Respondent's current environmental management system as implemented at its Facilities listed in Paragraph 69, above. The Auditor will evaluate any written programs and the effectiveness of Respondent's implementation of said existing written programs;
- b) Task Two: Development of a Comprehensive CFEMS as described in Paragraph 70, above;
- c) Task Three: Development of an electronic corrective action and/or preventive action environmental tracking system;
- d) Task Four: Conduct environmental training based on the CFEMS requirements, with specific attention to implementation and follow-up;



- e) Task Five: The Auditor will conduct a multimedia environmental compliance audit of Respondent's facilities located in Belcamp, Maryland, Rosedale, Maryland, Tolleson, Arizona, Vandalia, Ohio, Conneaut, Ohio and Fort Madison, Iowa;
- f) Task Six: The Auditor will assist Respondent to implement corrective measures to resolve any noncompliance identified during the multimedia audit conducted as described in Task Five; and,
- g) Task Seven: The Auditor will reevaluate and modify written procedures to address any areas or instances of noncompliance identified during the multimedia audit of Respondent's facilities conducted as described in Task Five.

72. Respondent shall perform the SEP in accordance with the following schedule:

- a) No later than ninety days (90) days after this CAFO becomes effective, Respondent shall complete Task One described in Paragraph 71(a), above.
- b) No later than one hundred eighty (180) days after this CAFO becomes effective, Respondent shall complete Task Two described in Paragraph 71(b), above.
- c) No later than one hundred fifty (150) days after this CAFO becomes effective, Respondent shall complete Task Three described in Paragraph 71(c), above.
- d) No later than two hundred ten (210) days after this CAFO becomes effective, Respondent shall submit to EPA a SEP Implementation Report, as described in Paragraph 77, below.
- e) No later than two hundred seventy (270) days after this CAFO becomes effective, Respondent shall complete Task Four described in Paragraph 71(d), above.
- f) No later than one year (365 days) after this CAFO becomes effective, Respondent shall complete Tasks Five, Six, and Seven described in Paragraphs 71(e) – (g), above.

73. Respondent's total expenditure for installation of this SEP shall not be less than THIRTY-SIX THOUSAND SIX HUNDRED NINE DOLLARS (\$36,609.00). Respondent shall document all SEP expenditures and shall include documentation of all expenditures made in connection with the SEP as part of the SEP Completion Report required by this CAFO, as described in Paragraph 78, below.

74. Respondent hereby certifies:

- a) That all cost information provided by Respondent to EPA in connection with Respondent's performance of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$36,609.00;
  - b) That, as of the date of its signature to this Consent Agreement, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation and is not required to perform or develop this SEP by any other agreement, grant or as injunctive relief;
  - c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims in this Consent Agreement;
  - d) That Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP;
  - e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - f) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraphs 69 – 71, and,
  - g) That Respondent has inquired of the SEP recipient and/or SEP implementer, August Mack Environmental, whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by August Mack Environmental that it is not a party to such a transaction.
75. 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.
76. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement, from the effective date of the CAFO, shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action initiated by the United States Environmental Protection Agency against Independent Can Company to enforce federal laws."
77. No later than two hundred ten (210) days after this CAFO becomes effective, Respondent shall submit a written SEP Implementation Report to EPA, c/o Eric Greenwood, (3LC32) U.S. EPA, Land and Chemicals Division, RCRA Waste Branch, 1650 Arch Street,

Philadelphia, PA, 19103, with a copy to Joyce Howell, (3RC30) U.S. EPA, Office of Regional Counsel, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. The SEP Implementation Report shall include the following elements

- a) A copy of the independent auditor's report produced in conjunction with the performance of Task One.
- b) A copy of the CFEMS produced in the performance of Task Two.
- c) A copy of written materials produced in the performance of Task Three.
- d) A description of any unforeseen problems encountered during implementation of the SEP and a statement as to whether such problems will impact the timely completion of the SEP.

78. No later than three hundred ninety-five days (395) after this CAFO becomes effective, Respondent shall submit a written SEP Completion Report to EPA, c/o Eric Greenwood, (3LC32) U.S. EPA, Land and Chemicals Division, RCRA Waste Branch, 1650 Arch Street, Philadelphia, PA, 19103, with a copy to Joyce Howell, (3RC30) U.S. EPA, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA., 19103. The SEP Completion Report shall contain the following information:

- a) A copy of Respondent's final CFEMS;
- b) A copy of the training materials used in the performance of Task Four;
- c) A copy of the compliance audit report performed under Task Five;
- d) A description of the corrective measures implemented in the performance of Task Six;
- e) A copy of the revised written procedures created in the performance of Task Seven;
- f) Itemized costs of each SEP expenditure, along with the sum total of all costs incurred by the Respondent that are eligible for SEP credit; and
- g) In addition to itemizing each SEP expenditure identified in its SEP Completion Report, Respondent shall clearly identify and provide full, complete and "acceptable financial documentation," as identified in Paragraph 79(j), below, evidencing its actual payment of all eligible SEP costs;

- h) Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
  - j) For purposes of this Paragraph, "acceptable financial documentation" includes payment, invoices, purchase orders, payment receipts, 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.
79. Respondent shall, by its representative officers, sign the SEP Implementation Report and the SEP Completion Report required by Paragraphs 77 and 78 respectively 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.
80. Respondent agrees that failure to submit the written SEP Implementation Report required by Paragraph 77 above, and the failure to submit the written SEP Completion Report required by Paragraph 78, above, shall be deemed a violation of this CAFO and, in such event, Respondent will be liable for stipulated penalties pursuant to Section V, below.
81. 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.
82. Upon receipt of the written SEP Completion Report, identified in Paragraph 78, above, EPA will provide written notification to the Respondent of one of the following:
- a. If the Report is deficient, notify the Respondent in writing that the Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies; or
  - b. If the SEP Completion Report demonstrates that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the SEP has been completed in accordance with this CAFO.

83. After Respondent has received notice of a deficient SEP Completion Report and has been given an opportunity to cure the deficiencies noted by EPA, if the revised SEP Completion Report demonstrates that the SEP has not been completed in accordance with the terms of this CAFO, EPA will notify the Respondent in writing that EPA has concluded that the SEP has not been completed in accordance with the terms of this CAFO and EPA shall seek stipulated penalties in accordance with Section V, below.
84. If EPA provides notification in accordance with Paragraph 82(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 an agreement on changes necessary to properly implement the SEP, operate the SEP and/or complete the SEP, and to revise and re-submit the relevant 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 EPA's decision on the adequacy of the implementation and/or operation of the SEP, and the adequacy of any Report Respondent is required to submit pursuant to this CAFO, 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 Section V, below.

#### **V. STIPULATED PENALTIES**

85. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP, described in Paragraphs 69-71, above, submission of the written SEP Implementation Report and the written SEP Completion Report, described in Paragraphs 77 and 78, respectively, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 73, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
86. Except as provided in Paragraph 87, below, if the SEP has not been installed and operated satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of FORTY THOUSAND TWO HUNDRED SIXTY-SEVEN DOLLARS (\$40,267.00).
87. If the SEP is not completed in accordance with Paragraph 69 - 71, above, but the Complainant determines that Respondent made good faith and timely efforts to install and operate the SEP Complainant may, in its sole discretion, reduce or waive any stipulated penalty assessed pursuant to Paragraph 85, above.

88. If the SEP is implemented and operated in accordance with Paragraph 69 - 71, above, and the SEP Completion Report is submitted in accordance with Paragraph 78, above, but the Respondent spent less than Respondent's good faith estimate pursuant to requirement of Paragraph 73, above, Respondent shall pay a stipulated penalty to EPA in the amount of FOUR THOUSAND TWENTY-SIX DOLLARS (\$4,026.00).
89. If the SEP is completed in accordance with Paragraph 69 - 71, above, the SEP Completion Report is submitted in accordance with Paragraph 78, above, Respondent shall not be liable for any stipulated penalty; and
90. If Respondent fails to timely submit the SEP Implementation Report and/or SEP Completion Report as required by Paragraphs 77 and 78, above, Respondent shall pay a stipulated penalty in the amount of \$250.00 per day for each calendar day after the report was originally due until the Report(s) is/are submitted.
91. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
92. Respondent shall pay stipulated penalties in the manner described in Paragraphs 62 - 63, above, not later than fourteen (14) calendar days after receipt of written demand from EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 65 through 66 above, as applicable, if Respondent fails to pay the stipulated penalties within 14 calendar days of receipt of EPA's written demand.

## **VI. RESERVATION OF RIGHTS**

101. This CAFO resolves only EPA's claims for civil penalties for the violations alleged in the CAFO. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

**VII. OTHER APPLICABLE LAWS**

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

**VIII. CERTIFICATION OF COMPLIANCE**

103. Respondent certifies to Complainant by its representative's signature hereto, to the best of its knowledge and belief, that Respondent and the Facility are in compliance with all relevant provisions of the federally authorized MdHWMR, and of the RCRA Subtitle C, 42 U.S.C. §§ 6921 – 6939g, for which violations are alleged in this Consent Agreement.

**IX. PARTIES BOUND**

104. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

**X. EFFECTIVE DATE**

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

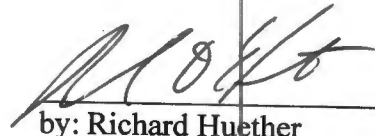
**XI. ENTIRE AGREEMENT**

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

For Respondent:

Independent Can Company

Aug 1, 2017  
Date

  
by: Richard Huether  
President



For Complainant:

Aug. 16, 2017  
Date

Joyce A. Howell  
by: Joyce A. Howell  
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.

8-24-17  
Date

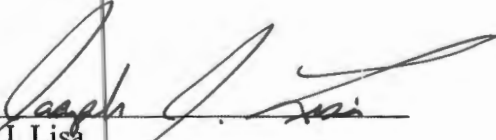
Catherine A. Libertz  
Catherine A. Libertz, Acting Director,  
Land and Chemicals Division  
EPA Region III



§ 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **\$33,195.00**, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Aug. 30, 2017  
Date: 0

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

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

**In the Matter of:**

**Independent Can Company  
1300 Brass Mill Road  
Belcamp, Maryland 21017**

**Respondent,**

**Independent Can Company  
1300 Brass Mill Road  
Belcamp, Maryland 21017**

**Facility.**

U.S. EPA Docket RCRA-03-2017-0126

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

RECEIVED  
2017 AUG 30 PM 1:55  
REGIONAL HEARING CLERK  
U.S. EPA REGION III

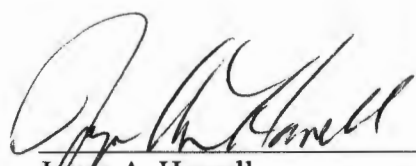
**CERTIFICATE OF SERVICE**

I certify that I sent a copy of the Consent Agreement and Final Order in the above-captioned matter to the addressee and in the manner listed below. The original and one copy of the Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Via UPS, next day delivery to:

Peter Schrof  
Independent Can Company  
1300 Brass Mill Road  
Belcamp, MD 21017

Dated: 8/30/2017

  
\_\_\_\_\_  
Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. EPA - Region III

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

**In the Matter of:**

**Independent Can Company  
1300 Brass Mill Road  
Belcamp, Maryland 21017**

**Respondent,**

**Independent Can Company  
1300 Brass Mill Road  
Belcamp, Maryland 21017**

**Facility.**

U.S. EPA Docket RCRA-03-2017-0126

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

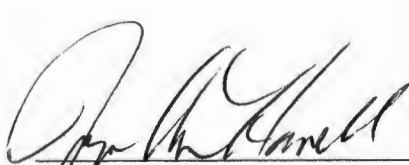
**CERTIFICATE OF SERVICE**

I certify that I sent a copy of the Consent Agreement and Final Order in the above-captioned matter to the addressee and in the manner listed below. The original and one copy of the Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Via UPS, next day delivery to:

Peter Schrof  
Independent Can Company  
1300 Brass Mill Road  
Belcamp, MD 21017

Dated: 8/30/2017

  
\_\_\_\_\_  
Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. EPA - Region III

RECEIVED  
2017 AUG 30 PM 1:55  
REGIONAL HEARING CLERK  
U.S. EPA REGION III