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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

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REGIONAL OFFICE  
EPA REGION III, PHILA.

In Re: )  
)  
BAE Systems Information and )  
Electronic Systems Integration, Inc. )  
)  
and )  
)  
Lockheed Martin Corporation )  
)  
RESPONDENTS. )  
)  
BAE Systems Information and )  
Electronic Systems Integration, Inc. )  
9300 Wellington Road )  
Manassas, VA 20110 )  
EPA Facility I.D. #VAR000500637 )  
)  
and )  
)  
Lockheed Martin Corporation )  
9500 Godwin Drive )  
Manassas, VA 20110 )  
)  
FACILITY. )

Docket No. RCRA-03-2008-0407

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

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division (formerly the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and BAE Systems Information and Electronic Systems Integration, Inc. ("Respondent BAE"), and Lockheed Martin Corporation ("Respondent LM") (collectively, "Respondents") pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

2. The Commonwealth of Virginia ("Virginia") has received federal authorization to administer a Hazardous Waste Management Program (the "Virginia Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The Virginia Hazardous Waste Management Regulations ("VaHWMR"), as codified at VaHWMR §§ 1.0 *et seq.* (1984), were authorized, effective December 18, 1984 (49 *Fed. Reg.* 47391 (December 4, 1984)), by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, and subsequently were re-authorized effective: August 13, 1993 (58 *Fed. Reg.* 32885 (June 14, 1993)); September 29, 2000 (65 *Fed. Reg.* 46607 (July 31, 2000)), as amended, and codified in 9 VAC 20-60-12 *et seq.* (1999); and June 20, 2003 (68 *Fed. Reg.* 36925 (June 20, 2003)). The VaHWMR incorporate, with certain exceptions, definitions and adopt specific provisions of Title 40 of the Code of Federal Regulations (July 2001 edition) by reference. *See* 9 VAC 20-60-14, -18 and -260 through -279. This CA and the accompanying Final Order (collectively "CAFO") address violations, by the Respondents, of RCRA and of the federally authorized Virginia Hazardous Waste Management Program. For convenience, all CA citations to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260 - 279 are to the July 1, 2007 edition of the Code of Federal Regulations.

3. The federally authorized provisions of the Virginia Hazardous Waste Management Program are requirements of RCRA Subtitle C and, accordingly, are enforceable by EPA pursuant to Section 3008(a) of RCRA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondents hereby are notified of EPA's determination that Respondents have violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized VaHWMR requirements promulgated thereunder, at certain hereinafter identified buildings/areas of a 178-acre facility located at 9500 Godwin Drive in Manassas, Virginia (the "Facility").

4. Pursuant to Section 22.13(b) of the *Consolidated Rules of Practice*, this CAFO simultaneously commences and concludes an administrative proceeding against the Respondents, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and resolves alleged violations of RCRA, and of the federally authorized VaHWMR requirements promulgated thereunder, at the Facility. \*

5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (“VaDEQ”), of EPA’s intent to commence this action against the Respondents in response to the violations of RCRA Subtitle C that are alleged herein.

## **II. GENERAL PROVISIONS**

6. For purposes of this proceeding only, Respondents each admit the jurisdictional allegations set forth in this CAFO.

7. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 6, immediately above.

8. Respondents each agree not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the commencement of an enforcement action based on Respondents’ failure to comply with the terms of the CAFO.

9. For the purposes of this proceeding only, Respondent BAE and Respondent LM each hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

10. Respondent BAE and Respondent LM each consent to the issuance of this CAFO and each agree to comply with its terms and conditions.

11. The Parties shall bear their own costs and attorney’s fees.

12. This CAFO shall not relieve the Respondents of their respective obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

## **III. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:

- a. Respondent BAE is a Delaware corporation that is engaged in the development, delivery and support of advanced defense and aerospace systems in the air, on land, at sea and in space. Respondent BAE is headquartered in Nashua, New Hampshire and maintains offices at 9300 Wellington Road, Manassas, Virginia, where it manufactures radiation-hardened microprocessors and semiconductors for aerospace and military applications in Facility premises leased from Respondent LM.
- b. Respondent LM is a Maryland corporation engaged in the research, design, development, manufacture and integration of advanced technology systems, products and services. Respondent LM is headquartered in Bethesda, Maryland. Its Maritime Systems and Sensors (MS2) business, with offices located at 9500 Godwin Drive, Manassas, Virginia, is home to the company's Undersea Systems business, which occupies the large majority of the Facility.
- c. Respondent BAE and Respondent LM each is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and as defined in 40 C.F.R. § 260.10 and incorporated by reference in 9 VAC 20-60-260.
- d. Respondent LM leases certain physical space at the Facility to Respondent BAE and the Respondents have entered into certain contractual agreements whereby:
  - i. hazardous waste generated by Respondent BAE in production tools and processes located in leased premises at Building 110 of the Facility is collected, conveyed and temporarily stored, prior to off-site disposal, in a "Solvent Waste Collection System" that is owned and/or operated by Respondent LM and Respondent BAE; and
  - ii. Respondent LM provides to Respondent BAE certain environmental, health and safety compliance and maintenance services in connection with Respondent BAE's business operations at the Facility, including the handling, transport and management of hazardous waste generated by Respondent BAE from operations conducted in leased premises at Building 110 of the Facility.
- e. On or about January 30, 2001, Respondent BAE submitted to EPA a Notification of Hazardous Waste Activity ("Notification"), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility and in which Respondent BAE identified itself as a large quantity generator of hazardous waste.

- f. On May 11, 2006, a duly authorized representative of EPA conducted a compliance evaluation inspection (the "EPA Inspection") at the Facility to assess the Respondent BAE's compliance with federally authorized VaHWMR requirements.
- g. On October 25, 2006, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter ("IRL") to Respondent BAE seeking additional information regarding Respondent BAE's operational and hazardous waste generation and management practices at the Facility and requesting the production of specified documents and information.
- h. Respondent BAE timely replied to EPA's IRL by correspondence dated November 22, 2006.
- i. On June 15, 2007, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an IRL to Respondent LM seeking information regarding Respondent LM's role, responsibilities and activities in the management of hazardous waste generated by Respondent BAE at the Facility and requesting the production of specified documents and information.
- j. Respondent LM timely replied to EPA's IRL by correspondence dated July 27, 2007.
- k. On the basis of the EPA Inspection and a review of information provided by Respondents in response to the EPA IRLs, EPA concludes that Respondents have violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized VaHWMR requirements promulgated thereunder.

**COUNT I**  
***(Operating Without a Permit)***

14. The allegations of Paragraphs 1 through 13, above, are incorporated herein by reference as though fully set forth at length.

**Applicable Definitions**

15. Pursuant to 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260:

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and Lockheed Martin Corporation***

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- a. the term *container* “means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.”
- b. the term *facility* is defined, in pertinent part, to mean “(1) [a]ll contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).”
- c. the term *generator* “means any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.”
- d. the term *hazardous waste* means a hazardous waste as defined in [40 C.F.R.] § 261.3. . . .”
- e. a *hazardous waste management unit* “is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area[]” and “[e]xamples of hazardous waste management units include . . . a tank and its associated piping and underlying containment system and a container storage area . . . [which] includes containers and the land or pad upon which they are placed.”
- f. the term *operator* “means the person responsible for the overall operation of a facility”.
- g. the term *owner* “means the person who owns a facility or part of a facility.”
- h. the term *storage* “means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.”
- i. the term *tank* “means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.”
- j. the term *tank system* “means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.”

- k. the term “*new tank system or new tank component*” means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of § 264.193(g)(2) and § 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. . . .”

**Applicable Statutory Permit Requirements & Factual Findings**

16. 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

17. Respondents never have been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference in 9 VAC 20-60-270, for the storage of hazardous waste at the Facility, and Respondents did not, at any time, have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference in 9 VAC 20-60-270. Furthermore, as alleged below, Respondents have not met applicable permit exemption conditions.

**Permit Exemption Conditions - Accumulation Time**

18. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 9 VAC 20-60-262, generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings 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. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), as incorporated by reference in 9 VAC 20-60-262, which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart BB;
- b. the condition set forth at 40 C.F.R. § 262.34(a)(1)(ii), as incorporated by reference in 9 VAC 20-60-262, which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in tanks, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts J and BB; and

- c. the condition set forth at 40 C.F.R. § 262.34(a)(4), as incorporated by reference into 9 VAC 20-60-262, which requires, in pertinent part and with exceptions not herein applicable, that a hazardous waste generator comply with the requirements for owners and operators in 40 C.F.R. Part 265, Subpart D (relating to contingency plans).

**Permit Exemption Conditions - Contingency Plan**

19. 9 VAC 20-60-265 incorporates by reference the “Content of Contingency Plan” requirements of 40 C.F.R. Part 265, Subpart D [entitled “Contingency Plan and Emergency Procedures”], which requirements are set forth at 40 C.F.R. § 265.52 and provide, in pertinent part, that “[t]he [facility contingency] plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Sec. 265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”

**Permit Exemption Conditions - Tank Systems**

20. 9 VAC 20-60-265 incorporates by reference the “Applicability” requirements of 40 C.F.R. Part 265, Subpart J [entitled “Tank Systems”], including the requirements of 40 C.F.R. § 265.190(a), which provide, with exceptions not herein applicable, that the requirements of 40 C.F.R. Part 265, Subpart J, “apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste. . . .”
21. 9 VAC 20-60-265 incorporates by reference the “Design and installation of new tank systems or components” requirements of 40 C.F.R. Part 265, Subpart J, which requirements are set forth at 40 C.F.R. § 265.192 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.192(a) provides that “[o]wners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with [40 C.F.R.] § 270.11(d) . . . attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste”; and

- b. 40 C.F.R. § 265.192(d) provides that “[a]ll new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed in use.”

22. 9 VAC 20-60-265 incorporates by reference the “Inspections” requirements of 40 C.F.R. Part 265, Subpart J, including the requirements of 40 C.F.R. § 265.195(b), which provide, with exceptions not herein applicable, that “. . . the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).”

**Permit Exemption Conditions - Air Emission Standards for Equipment Leaks**

23. 9 VAC 20-60-265 incorporates by reference the “Applicability” requirements of 40 C.F.R. Part 265, Subpart BB [entitled “Air Emission Standards for Equipment Leaks”], which requirements are set forth at 40 C.F.R. § 265.1050 and provide, in pertinent part, as follows:

- a. 40 C.F.R. § 265.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 265, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.
- b. 40 C.F.R. § 265.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 265, Subpart BB, “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: “(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”
- c. 40 C.F.R. § 265.1050(c) provides that: “[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”

24. 9 VAC 20-60-265 incorporates by reference the “Definitions” section of 40 C.F.R. Part 265, Subpart BB, which provisions are set forth at 40 C.F.R. § 265.1051 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1051 provides, in relevant part, that: “[a]s used in this [40 C.F.R. Part 265] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .”, which section therein defines the term:
    - i. *equipment* to mean and include “each valve, pump . . . open ended valve or line, or flange or other connector. . . .”
    - ii. *in light liquid service* to mean “that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.”
    - iii. *open-ended valve or line* to mean “any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.”
25. 9 VAC 20-60-265 incorporates by reference the “Standards: Pumps in light liquid service” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1052 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1052(a)(1) provides, with exceptions and exclusions (including those of 40 C.F.R. § 265.1050(d), (e) and (f) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b) . . . .”
  - b. 40 C.F.R. § 265.1052(a)(2) provides that “[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.”

26. 9 VAC 20-60-265 incorporates by reference the “Standards: Open-ended valves or lines” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1056 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1056(a)(1) provides that “[e]ach open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.”
  - b. 40 C.F.R. § 265.1056(a)(2) provides that “[t]he cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.”
27. 9 VAC 20-60-265 incorporates by reference the “Standards: Valves in gas/vapor service or in light liquid service” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1057 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1057(a) provides, in relevant part, with exceptions not herein applicable, that “[e]ach valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b). . . .”
28. 9 VAC 20-60-265 incorporates by reference the “Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1061 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1061(a) provides that “[a]n owner or operator subject to the requirements of [40 C.F.R.] § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of valves to leak.”
  - b. 40 C.F.R. § 265.1061(b)(1) and (2) set forth requirements that “shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak” including a “performance test” to be conducted “upon designation, annually and at other times requested by the Regional Administrator” and requirements for repair “[i]f a valve leak is detected”.
  - c.\* 40 C.F.R. § 265.1061(c)(1) through (3) specifies the manner in which performance tests are to be conducted, the instrument reading measurement required to detect a leak and the manner in which leak percentage is to be determined.

29. 9 VAC 20-60-265 incorporates by reference the “Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1062 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1062(a) provides that “[a]n owner or operator subject to the requirements of [40 C.F.R.] § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of [several] alternative work practices. . . .”
  - b. 40 C.F.R. § 265.1062(b)(1) through (4) further provides that an owner or operator must “comply with the requirements for valves, as described in [40 C.F.R.] § 265.1057, except . . .” that: “[a]fter two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to . . . monitor for leaks once every six months”; “[a]fter five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to . . . monitor for leaks once every year”; and “[i]f the percentage of valves leaking is greater than 2 percent, the owner or operators shall monitor monthly in compliance with the requirements in [40 C.F.R.] § 265.1057, but may again elect to use this section after meeting the requirements of [40 C.F.R.] § 265.1057(c)(1).”
30. 9 VAC 20-60-265 incorporates by reference the “Test methods and procedures” of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1063 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1063(b)(1) provides that “[l]eak detection monitoring, as required in [40 C.F.R.] §§ 265.1052 through 265.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60.”
  - b. 40 C.F.R. § 265.1063(d)(1) through (3) provides that “[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 265.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 . . . ; (2) Method 9060A . . . SW-846 . . . ; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required d]ocumentation of a waste determination [made] by knowledge . . . .”

31. 9 VAC 20-60-265 incorporates by reference the "Recordkeeping requirements" of 40 C.F.R. Part 265, Subpart BB, which requirements are set forth at 40 C.F.R. § 265.1064 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1064(a) provides that "(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section [; and] (2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit."
  - b. 40 C.F.R. § 265.1064(b) provides that "[o]wners and operators must record the following information in the facility operating record: (1) For each piece of equipment to which subpart BB of part 265 applies: (i) Equipment identification number and hazardous waste management unit identification[;] (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan)[;] (iii) Type of equipment (e.g., a pump or pipeline valve)[;] (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment[;] (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid)[; and] (vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals")."
  - c. 40 C.F.R. § 265.1064(g) provides that "[t]he following information pertaining to all equipment subject to the requirements in §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record: (1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart[;] (2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. . . [;] (ii) The designation of this equipment as subject to the requirements of §§ 265.1052(e) . . . or 265.1057(f) . . . signed by the owner or operator [;] \* \* \* (4)(i) The dates of each compliance test required in §§ 265.1052(e) . . . and 265.1057(f)[;] (ii) The background level measured during each compliance test[;] (iii) The maximum instrument reading measured at the equipment during each compliance test \* \* \* [; and] (6) Identification, either by list or location (area or group) of equipment that contains or contains hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year."

**Factual Findings - Permit Exemption Conditions**

32. At all times relevant to this CA, Respondent LM and Respondent BAE each was an *owner* and/or *operator*, as these terms are defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, of a Solvent Waste Collection System, which includes all associated equipment and appurtenances thereto (hereinafter the “Solvent Waste Collection System” or “System”), at the Facility that was used in the collection, conveyance and storage of hazardous waste prior to off-site disposal.

33. At all times relevant to this CA, Respondent BAE was the *generator of hazardous waste*, as these terms are defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, (having EPA Hazardous Waste Number D001, as specified in 40 C.F.R. § 261.21 and incorporated by reference in 9 VAC 20-60-261) with an organic concentration of at least 10 percent by weight that was collected, conveyed and stored in the Solvent Waste Collection System at the Facility prior to off-site disposal.

34. The Solvent Waste Collection System is and, at all times relevant to this CA, was a *facility*, as that term is defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10. The Solvent Waste Collection System is and was located within the three buildings/areas at the Facility which are identified and described immediately below:

- a. Building 110 at the Facility, in which D001 and F003 hazardous waste with an organic concentration of at least 10 percent by weight is collected and conveyed by gravity through a series of pipes to a Solvent Lift Station;
- b. the Solvent Lift Station area of the Facility, in which piping, two tanks (i.e., two sections of piping which are stationary devices designed to contain an accumulation of hazardous waste which are constructed of non-earthen materials which provide structural support) and two pumps operate to convey D001 and F003 hazardous waste with an organic concentration of at least 10 percent by weight from Building 110 to Building 227A (and to store temporarily small quantities of such hazardous waste as are required to keep the pumps primed); and
- c. Building 227A (also known as the “Solvent Drum Fill” area of the Facility), where D001 and F003 hazardous waste with an organic concentration of at least 10 percent by weight is received from the Solvent Lift Station and is conveyed, via pipe, into 55-gallon containers for temporary storage prior to off-site shipment for disposal.

35. At the time of the EPA Inspection, at times prior and subsequent thereto, and at all times relevant to the allegations in this CA, the Respondents engaged in the *storage* of D001 and F003 *hazardous waste* with an organic concentration of at least 10 percent by weight in *containers* located at Building 227A of the Facility, and in *tanks* and *tank systems* (identified in Paragraph 34.b., above) for which construction commenced after July 14, 1986 (*i.e., new tank systems*) located at the Solvent Lift Station area of the Facility, as these terms are defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10.
36. The Solvent Waste Collection System is and was, at the time of the violations alleged herein, a *hazardous waste management unit*, as that term is defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10.
37. At the time of the EPA Inspection, at times prior and subsequent thereto, and at all times relevant to the allegations in this CA, the Solvent Waste Collection System included the following *equipment* that routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight for periods in excess of 300 hours per year, were not in vacuum service, and were not subject to any exemption from the requirements of 40 C.F.R. Part 265, Subpart BB, as incorporated by reference in 9 VAC 20-60-265:
- a. Building 110 — fifteen open-ended lines and numerous flanges and other connectors *in light liquid service*.
  - b. Solvent Lift Station — an open-ended line, two pumps *in light liquid service* and numerous valves, flanges and other connectors *in light liquid service*.
  - c. Building 227A — numerous valves, flanges and other connectors *in light liquid service*.
38. From September 2003 through June 26, 2006, each piece of *equipment* identified in Paragraph 37.a., immediately above, and from September 2003 through June 15, 2006, each piece of *equipment* identified in Paragraph 37.b. and .c., immediately above, was:
- a. subject to the 40 C.F.R. Part 265, Subpart BB, air emission equipment leak applicability standards of 40 C.F.R. § 265.1050(a) and (b) and, therefore, the equipment marking requirements of 40 C.F.R. § 265.1050(c), as incorporated by reference in 9 VAC 20-60-265; and

- b. not marked by the Respondents in a manner by which each such piece of *equipment* could be distinguished readily from other pieces of *equipment*, in accordance with the applicable requirements of 40 C.F.R. § 265.1050(c).
39. From September 2003 through June 14, 2006, each of the two pumps *in light liquid service* at the Solvent Lift Station area of the Facility were:
- a. subject to the 40 C.F.R. Part 265, Subpart BB, “Standards[] [for] pumps in light liquid service” requirements of 40 C.F.R. § 265.1052(a)(1), as incorporated by reference in 9 VAC 20-60-265; and
- b. not “monitored monthly to detect leaks” by the Respondents in accordance with the applicable requirements of 40 C.F.R. § 265.1052(a)(1).
40. From September 2003 through June 14, 2006 the *open-ended line* at the Solvent Lift Station identified in Paragraph 37.b., above, and from September 2003 through April, 2008 each of the fifteen *open-ended lines* in Building 110 identified in Paragraph 37.a., above, were:
- a. subject to the 40 C.F.R. Part 265, Subpart BB, air emission equipment leak standards for open-ended valves or lines of 40 C.F.R. § 265.1056(a)(1) and (2), as incorporated by reference in 9 VAC 20-60-265; and
- b. not equipped by the Respondents with a cap, blind flange, plug, or a second valve and the open end of each such piece of *equipment* was not sealed at all times, in accordance with the applicable requirements of 40 C.F.R. § 265.1056(a)(1) and (2).
41. From September 2003 through June 14, 2006, each of the valves *in light liquid service* located at Building 227A and at the Solvent Lift Station area of the Facility identified in Paragraph 37.b. and .c, above, were:
- a. subject to the 40 C.F.R. Part 265, Subpart BB, air emission equipment leak standards for valves *in light liquid service* of 40 C.F.R. § 265.1057, or one of the alternative standards of 40 C.F.R. § 265.1061 and § 265.1062, as incorporated by reference in 9 VAC 20-60-265, each of which require monitoring to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b);
- b. not being monitored monthly to detect leaks by the Respondents in accordance with:

- (i) the methods specified in 40 C.F.R. § 265.1063(b), as required pursuant to 40 C.F.R. § 265.1057(a);
- (ii) one of the alternative standards described in 40 C.F.R. § 265.1061(b) and (c), as required pursuant to 40 C.F.R. § 265.1061(a); or
- (iii) one of the alternative work practices specified in 40 C.F.R. § 265.1062(b)(2) and (3), as required pursuant to 40 C.F.R. § 265.1062(a).

42. From September 2003 through May 11, 2006, each piece of *equipment* located at Building 110, Building 227A and at the Solvent Lift Station area of the Facility, as identified in Paragraph 37.a. through .c., above, was:

- a. subject to the 40 C.F.R. Part 265, Subpart BB, "Test methods and procedures" of 40 C.F.R. § 265.1063(d)(1) through (3), as incorporated by reference in 9 VAC 20-60-265; and
- b. not the subject of any determination by the Respondents (made by any of the requisite test methods or procedures, or by the application of any waste stream or process knowledge) as to whether such *equipment* contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight, in accordance with the applicable requirements of 40 C.F.R. § 265.1063(d)(1) through (3), as incorporated by reference in 9 VAC 20-60-265.

43. From September 2003 through May 31, 2006, information pertaining to the *equipment* located at Building 227A and at the Solvent Lift Station area of the Facility identified in Paragraph 37.b. and .c., above, and from September 2003 through June 26, 2006, information pertaining to the *equipment* located at Building 110 and identified in Paragraph 37.a., above, was:

- a. subject to the 40 C.F.R. Part 265, Subpart BB, "Recordkeeping requirements" of 40 C.F.R. § 265.1064(b) and (g), as incorporated by reference in 9 VAC 20-60-265; and
- b. not recorded by the Respondents in any *facility* operating record or in any log kept in a facility operating record, in accordance with the applicable requirements of 40 C.F.R. § 265.1064(b)(1)(i) through (vi), or 40 C.F.R. § 265.1064(g)(1) through (6).

***In the Matter of:***

***BAE Systems Information and Electronic Systems Integration, Inc.  
and Lockheed Martin Corporation***

***Consent Agreement  
Docket No. RCRA-03-2008-0407***

44. From September 2003 through September 5, 2008, the two *tanks* and associated ancillary equipment (*i.e.*, *new tank systems*) located at the Solvent Lift Station area of the Facility, as identified in Paragraph 34.b., above, were:
- a. subject to 40 C.F.R. Part 265, Subpart J, requirements (via the “Applicability” provisions of 40 C.F.R. § 265.190(a)) for *tank systems*, including the “Design and installation of new tank systems or components” requirements of 40 C.F.R. § 265.192(a) and (d), as incorporated by reference in 9 VAC 20-60-265; and
  - b. not the subject of any written assessment, obtained by the Respondents, that was reviewed or certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), or of any tank tightness testing prior to being covered, enclosed or placed in use by the Respondents, in accordance with the applicable requirements of 40 C.F.R. § 265.192(a) and (d).
45. From September 2003 through September 5, 2008, the two *new tank systems* located at the Solvent Lift Station area of the Facility, as identified in Paragraph 34.b., above, were:
- a. subject to the 40 C.F.R. Part 265, Subpart J, “Inspections” requirements for *tank systems* of 40 C.F.R. § 265.195(b), as incorporated by reference in 9 VAC 20-60-265; and
  - b. not the subject of required daily “operating day” inspections by the Respondents, in accordance with the applicable requirements of 40 C.F.R. § 265.195(b).
46. At the time of the May 11, 2006 EPA Inspection, the Respondents, as owners and/or operators of the *facility* identified in Paragraph 34, above:
- a. were subject to the 40 C.F.R. Part 265, Subpart D, “Content of Contingency Plan” requirements for hazardous waste facilities of 40 C.F.R. § 265.52(d), as incorporated by reference in 9 VAC 20-60-265; and
  - b. failed to include in the Contingency Plan for the *facility* an up to date list of the names, addresses, and phone numbers of *all* persons qualified to act as emergency coordinator, in accordance with the applicable requirements of 40 C.F.R. § 265.52(d).

**Legal Conclusions - Operating without a Permit,  
Interim Status or Valid Exemption**

47. For each of the reasons and during each of the times set forth in Paragraphs 32 through 46, above, Respondent BAE failed to comply with the conditions, identified in Paragraph 18, above, for temporary accumulation of hazardous waste by a *generator* that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 9 VAC 20-60-262, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.

48. During the times set forth in Paragraphs 32 through 46, above, Respondents operated the Solvent Waste Collection System without a permit, interim status or valid exemption to the permitting/interim status requirements.

49. Respondent BAE and Respondent LM each violated 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a *hazardous waste storage facility* without a permit, interim status or valid exemption to the permitting/interim status requirements.

**COUNT II**

***(Failure to Comply with Content of Contingency Plan Requirements)***

50. The allegations of Paragraphs 1 through 49, above, are incorporated herein by reference as though fully set forth at length.

51. 9 VAC 20-60-264 incorporates by reference the “Content of Contingency Plan” requirements of 40 C.F.R. Part 264, Subpart D [entitled “Contingency Plan and Emergency Procedures”], including the requirements of 40 C.F.R. § 264.52(d) which provide, in pertinent part, that “[t]he [facility contingency] plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Sec. 264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. *For new facilities*, this information must be supplied to the Regional Administrator at the time of certification, rather than at the time of permit application.”

52. At the time of the May 11, 2006 EPA Inspection, the Respondents’ Contingency Plan for the *facility* identified in Paragraph 34, above, failed to include an up to date list of the names, addresses, and phone numbers of *all* persons qualified to act as emergency coordinator, as required pursuant to 40 C.F.R. § 264.52(d).

53. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.52(d), by failing to include an up to date list of the names, addresses, and phone numbers of *all* persons qualified to act as emergency coordinator in the Contingency Plan for the *facility* identified in Paragraph 34, above.

**COUNT III**

***(Failure to Comply with New Tank Systems Design and Installation Requirements)***

54. The allegations of Paragraphs 1 through 53, above, are incorporated herein by reference as though fully set forth at length.

55. 9 VAC 20-60-264 incorporates by reference the “Design and installation of new tank systems or components” requirements of 40 C.F.R. Part 264, Subpart J, including the requirements of 40 C.F.R. § 264.192(a) and (d), which provide as follows:

a. 40 C.F.R. § 264.192(a), provides, in relevant part and with exceptions not herein applicable, that “[o]wners or operators of new tank systems or components must obtain. . . a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with [40 C.F.R.] § 270.11(d) . . . attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. This assessment . . . must include, at a minimum, the following information: (1) Design standard(s) according to which the tank(s) and/or the ancillary equipment are constructed; (2) Hazardous characteristics of the waste(s) to be handled; \* \* \* (5) Design considerations to ensure that: (i) Tank foundations will maintain the load of a full tank; \* \* \* (iii) Tank systems will withstand the effects of frost heave.”

b. 40 C.F.R. § 264.192(d), provides, in relevant part, that “[a]ll new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. . . .”

56. As of September 5, 2008, Respondents had not obtained a written structural integrity assessment that had been reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), or that included the relevant and applicable information required pursuant to 40 C.F.R. § 264.192(a)(1), (2) and (5), for the two *tanks* and associated ancillary *equipment* (*i.e., new tank systems or components*) located at the

Solvent Lift Station area of the Facility, as identified in Paragraph 34.b., above; nor had Respondents tested such *new tank systems or components* for tightness prior to their being covered, enclosed, or placed in use, in accordance with the applicable requirements of 40 C.F.R. § 264.192(d).

57. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.192(a)(1), (2) and (5) and (d), by failing, with respect to each of the two *new tank systems or components* located at the Solvent Lift Station area of the Facility, to: obtain and submit timely a written assessment reviewed or certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; and, perform the required testing for tightness of such *new tank systems or components* prior to covering, enclosing or placing them into use.

#### **COUNT IV**

##### ***(Failure to Comply with Tank Systems Inspections Requirements)***

58. The allegations of Paragraphs 1 through 57, above, are incorporated herein by reference as though fully set forth at length.
59. 9 VAC 20-60-264 incorporates by reference the “Inspections” requirements of 40 C.F.R. Part 264, Subpart J, which requirements include those set forth at 40 C.F.R. § 264.195(c) and provide, in pertinent part and with exceptions not herein applicable, that “. . . the owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste[; and] (2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).”
60. From September 2003 through September 5, 2008, the two *new tank systems* located at the Solvent Lift Station area of the Facility, as identified in Paragraph 34.b., above, were not the subject of required daily “operating day” inspections by the Respondents, in accordance with the applicable requirements of 40 C.F.R. § 264.195(c), as incorporated by reference in 9 VAC 20-60-264.
61. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.195(c), by failing to inspect, at least once each operating day, the above ground portions of the two *new tank systems* located at the Solvent Lift Station area of the Facility to detect corrosion or releases of waste and the construction materials and the area immediately surrounding the externally accessible portion of such

*new tank systems, including the secondary containment systems, to detect erosion or signs of releases of hazardous waste.*

**COUNT V**

***(Failure to Comply with Air Emission Standards Equipment Marking Requirements)***

62. The allegations of Paragraphs 1 through 61, above, are incorporated herein by reference as though fully set forth at length.
63. 9 VAC 20-60-264 incorporates by reference the “Applicability” requirements of 40 C.F.R. Part 264, Subpart BB [entitled “ Air Emission Standards for Equipment Leaks”], which requirements are set forth at 40 C.F.R. § 264.1050, which include the following provisions:
- a. 40 C.F.R. § 264.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 264, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.
  - b. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 264, Subpart BB, “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: “(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”
  - c. 40 C.F.R. § 264.1050(d) provides that: “[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”
64. 9 VAC 20-60-264 incorporates by reference the “Definitions” section of 40 C.F.R. Part 264, Subpart BB, which provisions are set forth at 40 C.F.R. § 264.1051 and provide, in pertinent part that: “[a]s used in this [40 C.F.R. Part 264] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031. 40 C.F.R. § 264.1031 includes definitions for the terms “*equipment*”, “*in light liquid service*” and “*open-ended valve or line*”, which previously have been recited in Paragraph 24, above, and which are applicable to such terms as used hereafter.

65. At the time of the EPA Inspection, at times prior and subsequent thereto, and at all times relevant to the allegations in this CA, those portions of the Solvent Waste Collection System located at Building 110, Building 227A and at the Solvent Lift Station area of the Facility, respectively, included *equipment* that routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and which was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in 9 VAC 20-60-264.
66. From September 2003 through June 26, 2006, each piece of *equipment* identified in Paragraph 37.a., above, and from September 2003 through May 31, 2006, each piece of *equipment* identified in Paragraph 37.b. and .c., above, was not marked by the Respondents in a manner by which each such piece of *equipment* could be distinguished readily from other pieces of *equipment*, in accordance with the applicable requirements of 40 C.F.R. § 264.1050(d).
67. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.1050(d), by failing to mark each piece of *equipment* located at Building 110, Building 227A and at the Solvent Lift Station area of the Facility in such a manner that each such piece of *equipment* could be distinguished readily from other pieces of *equipment*.

#### **COUNT VI**

##### ***(Failure to Comply with Monitoring Requirements for Pumps in Light Liquid Service)***

68. The allegations of Paragraphs 1 through 67, above, are incorporated herein by reference as though fully set forth at length.
69. 9 VAC 20-60-264 incorporates by reference the “Standards: Pumps in light liquid service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1052 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1052(a)(1) provides, with exceptions and exclusions (including those of 40 C.F.R. § 264.1050(e), (f) and (g) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b) . . . .”

70. 9 VAC 20-60-264 incorporates by reference the “Test methods and procedures” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1063 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1063(b)(1) provides that “[l]eak detection monitoring, as required in [40 C.F.R.] §§ 264.1052 - 264.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60.”
  - b. 40 C.F.R. § 264.1063(d)(1) through (3) provides that “[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 . . . ; (2) Method 9060A . . . SW-846 . . . ; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required documentation of a waste determination [made] by knowledge . . . .”
71. At all times relevant to the allegations in this CA, the portion of the Solvent Waste Collection System located at the Solvent Lift Station area of the Facility included the two pumps *in light liquid service* previously identified in Paragraph 37.b., above, which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in 9 VAC 20-60-264.
72. From September 2003 through June 14, 2006, neither of the two pumps *in light liquid service* at the Solvent Lift Station of the Facility was “monitored monthly to detect leaks” by the Respondents pursuant to the methods specified in 40 C.F.R. § 264.1063, in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(1), as incorporated by reference in 9 VAC 20-60-264.
73. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.1052(a)(1), by failing to monitor each of the two pumps *in light liquid service* at the Solvent Lift Station of the Facility monthly, by the methods specified in 40 C.F.R. § 264.1063, to detect leaks.

**COUNT VII**

***(Failure to Comply with Air Emission Standards for Open-Ended Lines)***

74. The allegations of Paragraphs 1 through 73, above, are incorporated herein by reference as though fully set forth at length.
75. 9 VAC 20-60-264 incorporates by reference the “Standards: Open-ended valves or lines” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1056 and in pertinent part provide as follows:
- a. 40 C.F.R. § 264.1056(a)(1) provides that “[e]ach open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.”
  - b. 40 C.F.R. § 264.1056(a)(2) provides that “[t]he cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.”
76. At all times relevant to the allegations in this CA, the portion of the Solvent Waste Collection System located in Building 110 and at the Solvent Lift Station area of the Facility included the sixteen open-ended lines previously identified in Paragraph 37.a. and b., above, which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in 9 VAC 20-60-264.
77. From September 2003 through June 14, 2006, the *open-ended line* at the Solvent Lift Station identified in Paragraph 37.b., above, and from September 2003 through April, 2008, each of the fifteen *open-ended lines* in Building 110 identified in Paragraph 37.a., above, were not equipped by the Respondents with a cap, blind flange, plug, or a second valve and the open end of each such piece of *equipment* was not sealed by the Respondents in accordance with the applicable requirements of 40 C.F.R. § 264.1056(a)(1) and (2).
78. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.1056(a)(1) and (2), by failing to equip each open-ended line at the at the Solvent Lift Station and in Building 110 of the Facility with a cap, blind flange, plug, or a second valve and by failing to seal the open end of each such piece of *equipment*, in accordance with the applicable requirements of 40 C.F.R. § 264.1056(a)(1) and (2).

**COUNT VIII**

***(Failure to Comply with Air Emission Standards for Valves in Light Liquid Service)***

79. The allegations of Paragraphs 1 through 78, above, are incorporated herein by reference as though fully set forth at length.
80. 9 VAC 20-60-264 incorporates by reference the “Standards: Valves in gas/vapor service or in light liquid service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1057 and provide as follows:
- a. 40 C.F.R. § 264.1057(a) provides, in relevant part, with exceptions not herein applicable, that: “Each valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b). . . .”
81. 9 VAC 20-60-264 incorporates by reference the “Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak” of 40 C.F.R. Part 264, Subpart BB, including the requirements of 40 C.F.R. § 264.1061(a), which provide that “an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect to have all valves within a hazardous waste management unit to comply with an alternative standard that allows no greater than 2 percent of valves to leak”, as described further in 40 C.F.R. § 264.1061(b) and (c);
82. 9 VAC 20-60-264 incorporates by reference the “Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair” of 40 C.F.R. Part 264, Subpart BB, including the requirements of 40 C.F.R. § 264.1062(a), which provide that an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3).
83. From September 2003 through June 14, 2006, each of the valves *in light liquid service* located at Building 227A and at the Solvent Lift Station area of the Facility identified in Paragraph 37.b. and .c., above, was not monitored monthly by the Respondents to detect leaks in accordance with the methods specified in 40 C.F.R. § 264.1063(b), as required pursuant to 40 C.F.R. § 264.1057(a), one of the alternative standards described in 40 C.F.R. § 264.1061(b) and (c), as required pursuant to 40 C.F.R. § 264.1061(a) or one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3), as required pursuant to 40 C.F.R. § 264.1062(a).

84. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. §§ 264.1057(a), 264.1062(b) and (c), and 264.1062(a) and (b), by failing to comply with the applicable leak standard, or either of the alternative leak standard, requirements of 40 C.F.R. Part 264, Subpart BB, for the *valves in light liquid service* in Building 227A and at the Solvent Lift Station area of the Facility.

**COUNT IX**

***(Failure to Comply with Air Emission Standards Test Methods and Procedures Requirements)***

85. The allegations of Paragraphs 1 through 84, above, are incorporated herein by reference as though fully set forth at length.
86. 9 VAC 20-60-264 incorporates by reference the “Test methods and procedures” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1063 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1063(b)(1) provides that “[l]eak detection monitoring, as required in [40 C.F.R.] §§ 264.1052 through 264.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60.”
  - b. 40 C.F.R. § 264.1063(d)(1) through (3) provides that “[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 . . . ; (2) Method 9060A . . . of “Test Methods for Evaluating Solid Waste,” EPA Publication SW-846 . . . or analyzed for its individual organic constituents; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required d]ocumentation of a waste determination [made] by knowledge . . . .”
87. From September 2003 through May 11, 2006, Respondents failed to determine, for each piece of *equipment* located at Building 110, Building 227A and at the Solvent Lift Station area of the Facility, as identified in Paragraph 37.a. through .c., above, whether such *equipment* ever contained or contacted a hazardous waste with an organic concentration equal to, or exceeding, 10 percent by weight using one of the test methods specified in 40 C.F.R. § 264.1063(d)(1) through (3) or by application of either Respondents’ knowledge of the nature of the hazardous waste stream or the process by which it was produced.

88. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.1063(d)(1) through (3), by failing to use any of the requisite test methods or procedures set forth therein, or to apply waste stream or process knowledge, in accordance with the applicable requirements thereof, to determine whether any of the *equipment* located at Building 110, Building 227A and at the Solvent Lift Station area of the Facility, as identified in Paragraph 37.a. through .c., above, ever contained or contacted hazardous waste with an organic concentration equivalent to, or exceeding, 10 percent by weight.

**COUNT X**

***(Failure to Comply with Air Emission Standards Recordkeeping Requirements)***

89. The allegations of Paragraphs 1 through 88, above, are incorporated herein by reference as though fully set forth at length.

90. 9 VAC 20-60-264 incorporates by reference the “Recordkeeping requirements” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1064 and, provide, in pertinent part, as follows:

- a. 40 C.F.R. § 264.1064(a) provides that “(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section [; and] (2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.”
- b. 40 C.F.R. § 264.1064(b) provides that “[o]wners and operators must record the following information in the facility operating record: (1) For each piece of equipment to which subpart BB of part 264 applies: (i) Equipment identification number and hazardous waste management unit identification[;] (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan)[;] (iii) Type of equipment (e.g., a pump or pipeline valve)[;] (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment[;] (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid)[; and] (vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).”

- c. 40 C.F.R. § 264.1064(g) provides that “[t]he following information pertaining to all equipment subject to the requirements in §§ 264.1052 through 264.1060 shall be recorded in a log that is kept in the facility operating record: (1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart[;] (2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. . . [;] (ii) The designation of this equipment as subject to the requirements of §§ 264.1052(e) . . . or 264.1057(f) . . . signed by the owner or operator \* \* \* [;] (4)(i) The dates of each compliance test required in §§ 264.1052(e) . . . and 264.1057(f)[;] (ii) The background level measured during each compliance test[;] (iii) The maximum instrument reading measured at the equipment during each compliance test [; and] \* \* \*(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.”

91. From September 2003 through May 31, 2006, Respondents failed to record in a *facility* operating record or in a log kept in a facility operating record, information required pursuant to 40 C.F.R. § 264.1064(b)(1)(i) through (vi) and 40 C.F.R. § 264.1064(g)(1) through (6) for the *equipment* located at Building 227A and at the Solvent Lift Station area of the Facility, as identified in Paragraph 37.b. and .c., above.

92. From September 2003 through June 26, 2006, Respondents also failed to record in a *facility* operating record or in a log kept in a facility operating record, information required pursuant to 40 C.F.R. § 264.1064(b)(1)(i) through (vi) and 40 C.F.R. § 264.1064(g)(1) through (6) for the *equipment* located at Building 110, as identified in Paragraph 37.a., above.

93. Respondents violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.1064(b) and 40 C.F.R. § 264.1064(g), by failing to record in a *facility* operating record or in a log kept in a facility operating record, information that Respondents were required to record in accordance with each of the applicable recordkeeping requirements of 40 C.F.R. § 264.1064(b)(1)(i) through (vi) and 40 C.F.R. § 264.1064(g)(1) through (6).

#### **IV. CIVIL PENALTIES**

94. Respondents agree to pay a civil penalty in the amount of **Three Hundred and Twenty Five Thousand Dollars (\$325,000.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III (“Findings of Fact and Conclusions of Law”) of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondents’ receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondents.
95. The civil penalty settlement amount set forth in Paragraph 94, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements, and consideration of the cooperation exhibited by the Respondents during EPA’s investigation. 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 reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* (“Skinner Memorandum”). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum and in the RCRA Penalty Policy, penalties for RCRA violations occurring after January 30, 1997 were increased by 10% to account for inflation, not to exceed a \$27,500.00 per violation statutory maximum penalty. Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after March 15, 2004 have been increased by an additional 17.23% to account for subsequent inflation, not to exceed a current \$32,500.00 per violation statutory maximum penalty.
96. Payment of the civil penalty as required by Paragraph 94, above, shall be made via one of the following methods:
- a. All checks shall be made payable to “**United States Treasury**”
  - b. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- c. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency – Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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”

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

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548

ABA = 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format

- f. On-Line Payment Option: WWW.PAY.GOV

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

- g. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)  
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

97. All payments by Respondents shall include each Respondent's full name and address and the EPA Docket number of this Consent Agreement (RCRA-03-2008-0407).
98. At the time of payment, Respondents shall send a notice of such payment, including a copy of the check or EFT authorization, as applicable, to:

Ms. Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo  
Sr. Assistant Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

99. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
100. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
101. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
102. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
103. The Respondents each agree not to deduct for federal tax purposes all, or any portion of, the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

#### **V. CERTIFICATIONS**

104. Respondents each certify to Complainant by their respective signatures hereto, to the best of their knowledge and belief, that:
- a. Respondents currently are operating the Solvent Waste Collection System in compliance with all relevant provisions of the authorized Virginia Hazardous Waste Management Program and RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this Consent Agreement; and

- b. Respondents currently are operating the Solvent Waste Collection System in accordance with each of the permit exemption conditions of 40 C.F.R. § 262.34(a), as incorporated by reference in 9 VAC 20-60-262, such that the System is not being operated as a treatment, storage or disposal facility for which a permit is required pursuant to 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

#### **VI. OTHER APPLICABLE LAWS**

105. Nothing in this CAFO shall relieve the Respondents of any duties otherwise imposed upon them by applicable federal, state, or local law and/or regulation.

#### **VII. RESERVATION OF RIGHTS**

106. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this Consent Agreement. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondents, 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. Each Respondent reserves all available rights and defenses it may have to defend itself in any such action.

#### **VIII. FULL AND FINAL SATISFACTION**

107. Payment of the civil penalty as specified in Section IV ("Civil Penalties"), above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a), 42 U.S.C. § 6928(a), for the violations alleged in this Consent Agreement.

#### **IX. PARTIES BOUND**

108. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondents, the Respondents' respective officers and directors (in their official capacities) and the Respondents' respective successors and assigns. By their signatures below, the persons signing this Consent Agreement on behalf of the

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Respondents acknowledge that they are fully authorized to enter into this Consent Agreement and to bind Respondent BAE and Respondent LM to the terms and conditions of this Consent Agreement and the accompanying Final Order.

**X. EFFECTIVE DATE**

109. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

**XI. ENTIRE AGREEMENT**

110. 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 BAE Systems Information and Electronic Systems Integration, Inc.:

Date: 15 SEP 08

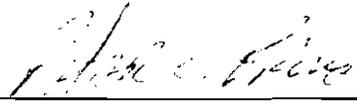
By:   
Sophia L. Rafatjah  
Vice President and Chief Counsel  
BAE Systems Information and Electronic Systems  
Integration, Inc.  
Sensor Systems

**In the Matter of:**  
**BAE Systems Information and Electronic Systems Integration, Inc**  
**And Lockheed Martin Corporation**

**Consent Agreement**  
**Docket No. RCRA-03-2008-4007**

**For Lockheed Martin Corporation:**

Date: 9/15/08

By: 

**Peter C. Krone**  
**Senior Manager, Contracts**  
**Lockheed Martin Corporation**

*In the Matter of:*  
*BAE Systems Information and Electronic Systems Integration, Inc.*  
*and Lockheed Martin Corporation*

*Consent Agreement*  
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For the Complainant:

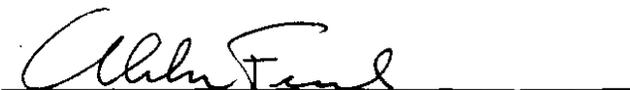
U.S. Environmental Protection Agency, Region III

Date: 9/22/2008

By:   
A.J. D'Angelo  
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/27/08

By:   
Abraham Ferdas, Director  
Land and Chemicals Division