

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

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 Regional Hearing Clerk
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In Re:)	
)	
Boyertown Foundry Company)	Docket No. RCRA-03-2011-0177
9th & Rothermel Drive)	
New Berlinville, PA 19545-0443,)	
)	
RESPONDENT.)	Proceeding Under Section
)	3008(a) and (g) of the
RCRA I.D. No. PAR000036111,)	Resource Conservation and
)	Recovery Act, as amended,
FACILITY.)	42 U.S.C. § 6928(a) and (g)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Boyertown Foundry Company (or "Respondent"), 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 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commences and concludes this administrative proceeding against Respondent.
3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30,

1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations (“PaHWR”) were authorized by the U.S. Environmental Protection Agency (“EPA” or the “Agency”) pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on three separate occasions (September 26, 2000, January 20, 2004 and April 29, 2009). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004 and June 29, 2009, respectively. The provisions of Pennsylvania’s current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization and October 12, 2005 for the April 29, 2009 PaHWR authorization.
5. 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. Respondent is hereby notified of EPA’s determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at its facility located at 9th & Rothermel Drive, New Berlinville, PA 19545-0443, RCRA I.D. No. PAR000036111 (the “Facility”).
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated July 2, 2010, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PaDEP” or the “Department”), of EPA’s intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 7, immediately above.
9. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the

CAFO.

10. For the 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.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.
13. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation 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 FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. 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:
16. Respondent is a Pennsylvania corporation with offices and a manufacturing facility located at 9th & Rothermel Drive, New Berlinville, PA 19545-0443, RCRA I.D. No. PAR000036111 (hereinafter, the "Facility").
17. Respondent operates a cast-iron foundry and manufactures products used principally in the manufacture of oil and gas fired boilers at its Facility.
18. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and 25 Pa. Code Section 260a.10.
19. At all times relevant to this CA, Respondent has been the "owner" and "operator" of a "facility" (*i.e.*, the Facility), where the Respondent engaged in "management or hazardous waste management" activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., and as defined in 25 Pa. Code

§ 260a.10.

20. As described below, Respondent is and, at all times relevant to this CAFO has been, a “generator” of “solid waste”, “hazardous waste” and “universal waste” at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1., including, but not necessarily limited to, hazardous wastes having EPA Hazardous Waste Numbers D003, D006 and/or D008, as specified in 40 C.F.R. §§ 261.23 and 261.24 and incorporated by reference in 25 Pa. Code § 261a.1.
21. At all times relevant to this CAFO, and as described below, Respondent has engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” and in a “containment building” at the Facility, as the term “storage” is defined in 25 Pa. Code Section 260a.10. and as the remaining terms are defined in 40 C.F.R. § 260.10., as incorporated by reference in 25 Pa. Code § 260a.1.
22. The Facility is a hazardous waste storage “facility” as that term is defined in 40 C.F.R. § 260.10 and 25 Pa. Code Section 260a.10.
23. Respondent has submitted to EPA a Notification of Hazardous Waste Activity, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which include operation as a large quantity generator of hazardous waste.
24. On March 24, 2010, a duly authorized representative of EPA (the “EPA Inspector”) conducted a compliance evaluation inspection of the Facility (the “Inspection” or “Facility Inspection”) to assess compliance with federally authorized PaHWR requirements.
25. On May 13, 2010, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to a Facility representative seeking additional information regarding Respondent’s hazardous waste generation and management practices at the Facility and requesting the production of specified documents and information.
26. A Facility representative replied to EPA’s IRL by correspondence dated June 24, 2010 (“IRL Response”).
27. On the basis of the Facility Inspection and a review of the supplemental information provided to EPA in the IRL Response, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

Permit Requirements

28. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1., no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
29. At all times relevant hereto, Respondent did not have 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 into 25 Pa. Code § 270a.1., for the storage of hazardous waste at the Facility, and did not 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 into 25 Pa. Code § 270a.1.

Permit Exemption Conditions - Accumulation Time Requirements

30. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10., 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), 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 I [Use and Management of Containers];
 - b. the condition set forth at 40 C.F.R. § 262.34(a)(1)(iv), which requires, in pertinent part, that when hazardous waste is placed in containment buildings, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart DD [Containment Buildings]; and
 - c. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in pertinent part, that the generator must comply with the requirements for owners or operators in Subparts C [Preparedness and Prevention] and D [Contingency Plan and Emergency Procedures] in 40 C.F.R. Part 265 and with 40 C.F.R. § 265.16 [relating to personnel training].

Regulatory Permit Exemption Conditions - Management of Containers

31. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I [Use and Management of Containers], including, in relevant part, the provisions of 40 C.F.R. § 265.173(a), which require that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”

Regulatory Permit Exemption Conditions - Containment Buildings

32. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart DD [Containment Buildings], including the provisions of 40 C.F.R. § 265.1101(a)(1), (c)(1)(i), (iii) and (iv), and (c)(3) and (4), pertaining to “Design and Operating Requirements” for hazardous waste containment buildings.

40 C.F.R. § 265.1101(a)(1) requires that all containment buildings must comply with design standards which ensure that “[t]he containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.”

40 C.F.R. § 265.1101(c)(1)(i), (iii) and (iv) further requires that owners or operators of all containment buildings must use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum: “(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier; . . . (iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and (iv) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions. In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.”

40 C.F.R. § 265.1101(c)(3) requires, in relevant part, that: “Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly . . .”

40 C.F.R. § 265.1101 (c)(4) additionally requires, in relevant part, that each hazardous containment building owner or operator must: “[i]nspect and record in the facility's operating record, at least once every seven days, data gathered from . . . the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.”

Regulatory Permit Exemption Conditions - Preparedness and Prevention

33. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart C [Preparedness and Prevention], including the provisions of 40 C.F.R. § 265.31, pertaining to the proper “[m]aintenance and operation of [a] facility”, which require, in relevant part, that: “[f]acilities must be maintained and operated to minimize the possibility of . . . any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

Regulatory Permit Exemption Conditions - Contingency Plan and Emergency Procedures

34. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart D [Contingency Plan and Emergency Procedures], including the content of contingency plan provisions set forth at 40 C.F.R. § 265.52(d), which require, in relevant part, that “[t]he [contingency] plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see [40 C.F.R.] § 265.55), and this list must be kept up to date.”

Regulatory Permit Exemption Conditions - Personnel Training

35. 25 Pa. Code § 265a.1. incorporates by reference the personnel training requirements and provisions of 40 C.F.R. § 265.16, including the provisions set forth at:

40 C.F.R. § 265.16(a)(1), which provides in relevant part that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part and that the owner or operator must ensure that this program includes all the elements described in the document required under 40 C.F.R. § 265.16(d)(3);

40 C.F.R. § 265.16(b), which provides in relevant part that facility personnel must successfully complete the program required in 40 C.F.R. § 265.16(a) within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later;

40 C.F.R. § 265.16(c), which provides in relevant part that facility personnel must take part in an annual review of the initial training required in 40 C.F.R. § 265.16(a);

40 C.F.R. § 265.16(d), which provides in relevant part that the owner or operator must maintain documents and records at the facility that include: (1) the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job; (2) a written job description for each position listed under 40 C.F.R. § 265.16(d)(1), including the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; (3), 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 under 40 C.F.R. § 265.16(d)(1); and (4) records that document that the training or job experience required under 40 C.F.R. § 265.16(a), (b), and (c) has been given to, and completed by, facility personnel; and

40 C.F.R. § 265.16(e), which provides in relevant part that training records on current personnel must be kept until closure of the facility and that training records on former employees must be kept for at least three years from the date the employee last worked at the facility.

COUNT I
(Operating Without a Permit)

36. The allegations of Paragraphs 1 through 35 of this CA are incorporated herein by reference.
37. At the time of a March 24, 2010 Facility Inspection, Respondent failed to comply with the permit exemption condition set forth at 40 C.F.R. § 262.34(a)(1)(i) for the temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator in containers, which incorporates by reference the closed container requirement of 40 C.F.R. § 265.173(a), by storing used and un-punctured aerosol cans, some of which were reactive D003 hazardous wastes, in an open fiber drum container located in the Maintenance Department area of the Facility at times when it was not necessary to add or remove waste from the container.
38. From March 24, 2010 through June 24, 2010, Respondent was in noncompliance with the permit exemption conditions set forth at 40 C.F.R. §§ 262.34(a)(1)(iv) for the temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator in containment buildings, which incorporate by reference the containment building requirements of 40 C.F.R. Part 265, Subpart DD, and the 40 C.F.R. § 265.1101(a)(1), (c)(1)(i), (iii) and (iv), and (c)(3) design and operating standards found therein, at the Facility's Sludge Bunker

containment building, where 3.9 tons of D006/D008 hazardous waste was then being stored, by:

- a. failing to comply with design standards to assure containment of the D006/D008 hazardous waste(s) managed therein, as required under 40 C.F.R. § 265.1101(a)(1);
- b. not using necessary controls and practices to ensure containment of the D006/D008 hazardous waste within the Sludge Bunker containment building by failing to: maintain the Sludge Bunker containment building primary barrier door to be free of significant cracks and gaps that could cause hazardous waste to be released from the primary barrier, as required under 40 C.F.R. § 265.1101(c)(1)(i); operate the Sludge Bunker containment building so as to prevent the tracking of hazardous waste out of the building by personnel or equipment, as required under 40 C.F.R. § 265.1101(c)(1)(iii); take measures to control fugitive dust emissions such that any openings exhibit no visible emissions, as required under 40 C.F.R. § 265.1101(c)(1)(iv); and
- c. failing to repair promptly the significant cracks and gaps discovered in the Sludge Bunker containment building primary barrier door, which could lead to or has caused a release of hazardous waste from the Sludge Bunker containment building, from March 24, 2010 through June 24, 2010, as required under 40 C.F.R. § 265.1101(c)(3).

39. Respondent was in noncompliance with the permit exemption conditions set forth at 40 C.F.R. §§ 262.34(a)(1)(iv) for the temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator in containment buildings, which incorporate by reference the containment building requirements of 40 C.F.R. Part 265, Subpart DD, and the 40 C.F.R. § 265.1101(c)(4) design and operating standard inspection requirements therein, as a result of Respondent's failure to conduct and record in the Facility's operating record, at least once every 7 days, inspections to detect signs of hazardous waste releases in and around the Facility's Sludge Bunker containment building during the periods of: November 14, 2007 through November 28, 2007; December 19, 2007 through January 4, 2008; September 5, 2008 through September 18, 2008; November 27, 2008 through December 17, 2008; June 30, 2009 through July 16, 2009; and November 19, 2009 through December 11, 2009, during which time periods D006/D008 hazardous waste was being stored therein by the Respondent.

40. Respondent was in noncompliance with the permit exemption conditions set forth at 40 C.F.R. §§ 262.34(a)(4) for the temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator by:

- a. failing to comply with the personnel training requirements of 40 C.F.R. § 265.16 through its failure to provide an annual review of the initial training required under 40 C.F.R. § 265.16(a), as required pursuant to 40 C.F.R. § 265.16(c), in calendar years 2006 through 2009 to a total of five (5) Facility personnel whose duties included providing awareness training, Facility emergency coordination and signing hazardous waste manifests and who were required to have such training in each of those years;
- b. failing to comply with the personnel training requirements of 40 C.F.R. § 265.16 through its failure, at the time of the March 24, 2010 Facility Inspection, to maintain documents or records at the Facility (which has not undergone RCRA “closure” within the meaning of 40 C.F.R. § 264.16(e)) for current personnel that included a written job description for each position at the Facility related to hazardous waste management, as required pursuant to 40 C.F.R. § 265.16(d)(2) and (e); and
- c. failing to comply with the preparedness and prevention requirements of 40 C.F.R. Part 265, Subpart C, and the 40 C.F.R. § 265.31 maintenance and operation of facility requirements therein at the time of the March 24, 2010 Facility Inspection through its failure to properly maintain and operate the Facility’s Sludge Bunker containment building in a manner that would minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air or soil, as evidenced by the observed movement of visible fugitive dust emissions through gaps beneath the Sludge Bunker doors directly to the outside environment on that date.

COUNT II

(Failure to Conduct Hazardous Waste Determination)

41. The allegations of paragraphs 1 through 40 of this CA are incorporated herein by reference as though fully set forth at length.
42. 25 PA Code Section 262a.10 incorporates by reference the requirements of 40 C.F.R. § 262.11, which provides, in relevant part, that: “[a] person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4[; and] (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261.”
43. At the time of the March 24, 2010 Facility Inspection, Respondent was storing used and unpunctured aerosol cans, which were not RCRA “empty”, as general trash in an open

fiber drum container located in the Maintenance Department area of the Facility.

44. Several of the used and unpunctured aerosol cans being stored as general trash by the Respondent in the Maintenance Department area of the Facility were solid wastes and, based upon Materials Safety Data Sheet information for the products originally contained therein, also were D003 "reactive" hazardous wastes pursuant to 40 C.F.R. Part 261, Subpart D, and the provisions of 40 C.F.R. § 261.23.
45. Respondent violated 25 Pa. Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.11, by failing to determine, using the methods identified in 40 C.F.R. § 262.11, that several unpunctured solid waste aerosol cans being stored as general trash in the Maintenance Department area of the Facility at the time of the March 24, 2010 Facility Inspection were D003 hazardous wastes.

COUNT III

(Failure to Maintain Copy of One-Time Initial LDR Notice)

46. The allegations of paragraphs 1 through 45 of this CA are incorporated herein by reference as though fully set forth at length.
47. 25 PA Code Section 268a.1 incorporates by reference the requirements of 40 C.F.R. § 268.7(a)(1) and (2).
48. 40 C.F.R. § 268.7(a)(1) provides that: "[a] generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste."
49. 40 C.F.R. § 268.7(a)(2) further provides that: "If the waste or contaminated soil does not meet the treatment standard: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column '268.7(a)(2)' of the Generator Paperwork Requirements Table in paragraph (a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file."
50. In calendar year 2008, Respondent began to transport the Facility's main hazardous waste stream, a land disposal restricted ("LDR") D008 hazardous waste cupola sludge that did

not meet LDR treatment standards, to a treatment, storage and disposal facility ("TSD Facility") in Vineland, New Jersey for treatment, storage and disposal of such LDR hazardous waste.

51. At the time of the March 24, 2010 Facility Inspection, Respondent failed to have or maintain at the Facility a copy of the one-time written LDR notice sent to the TSD Facility identified in the preceding paragraph with the Respondent's initial shipment of D008 hazardous waste cupola sludge to that TSD Facility.
52. At the time of the March 24, 2010 Facility Inspection, Respondent also failed to have or maintain at the Facility copies of any notifications or manifests to the TSD Facility referenced in each of the two preceding paragraphs which included the information in column '268.7(a)(2)' of the Generator Paperwork Requirements Table in paragraph (a)(4) of 40 C.F.R. § 268.7(a)(2).
53. Respondent violated 25 Pa. Code Section 268a.1, which incorporates by reference the requirements of 40 C.F.R. § 268.7(a)(2), by failing to maintain at the Facility at the time of the March 24, 2010 Facility Inspection a copy of the one-time written LDR notice that accompanied Respondent's initial shipment of D008 hazardous waste cupola sludge to the TSD Facility referenced above.

COUNT IV

(Failure to Contain Universal Waste Lamps Properly)

54. The allegations of Paragraphs 1 through 53, above, are incorporated herein by reference as though fully set forth at length.
55. 25 Pa. Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part 273, including the "Standards for Small Quantity Handlers of Universal Waste" which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the universal waste lamp management standards of 40 C.F.R. § 273.13(d).
56. 40 C.F.R. § 273.13(d) provides, in pertinent part that "[a] small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

57. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste lamps.
58. On March 24, 2010, at the time of the Facility Inspection, Respondent was accumulating universal waste fluorescent lamps in five open cardboard box containers in the Sand Bin Room at the Facility.
59. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.13(d), by storing universal waste lamps at the Facility in containers that were not closed.

COUNT V

(Failure to Comply with Universal Waste Labeling/Marking Requirements)

60. The allegations of Paragraphs 1 through 59, above, are incorporated herein by reference as though fully set forth at length.
61. The 40 C.F.R. Part 273, Subpart B, “Standards for Small Quantity Handlers of Universal Waste” that are incorporated by reference in 25 Pa. Code Section 266b.1 include the 40 C.F.R. § 273.14(e) provisions governing universal waste lamp labeling/marketing requirements.
62. 40 C.F.R. § 273.14(e) requires that “[e]ach lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste — Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.
63. At the time of the March 24, 2010 Facility Inspection, none of the five containers of universal waste bulbs in storage at the Sand Bin Room of the Facility, as identified in Paragraph 58, above, were labeled or marked with any one of the applicable and required phrases (i.e., “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”), with three of the containers wholly unlabeled and the other two containers labeled as containing “junk bulbs”.
64. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), by failing to properly label or mark universal waste lamps that it was accumulating at the Facility.

COUNT VI

(Failure to Keep Containers of Hazardous Waste Closed During Storage)

65. The allegations of Paragraphs 1 through 64 of this CA are incorporated herein by reference as though fully set forth at length.
66. 25 Pa. Code Section 264a.1., which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
67. On March 24, 2010, and as previously identified in paragraph 37, above, Respondent was storing an open container of D003 hazardous waste in an open fiber drum container in the Maintenance Department area of the Facility at times when it was not necessary to add or remove waste from the container.
68. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding hazardous waste in containers that were not kept closed during storage, when it was not necessary to add or remove waste.

COUNT VII

***(Failure to Comply with Hazardous Waste
Containment Building Design and Operating Standards)***

69. The allegations of paragraphs 1 through 68 of this CA are incorporated herein by reference as though fully set forth at length.
70. The containment building design and operating standards set forth at 40 C.F.R. §§ 264.1101(a)(1), (c)(1)(i), (iii) and (iv), and (c)(3) and (4) include the same requirements for TSD Facilities as do the standards set forth in 40 C.F.R. §§ 265.1101(a)(1), (c)(1)(i), (iii) and (iv), and (c)(3) and (4), which requirements are set forth in Paragraph 32, above, and which are incorporated herein by reference.
71. For each of the reasons and each of the time periods identified in paragraphs 38 and 39, above, that the Respondent failed to comply with the permit exemption conditions pertaining to the accumulation of hazardous waste in containment buildings, as set forth at 40 C.F.R. § 262.34(a)(1)(iv), Respondent additionally failed to comply with the containment building design and operating standards set forth at 40 C.F.R. §§ 264.1101(a)(1), (c)(1)(i), (iii) and (iv), and (c)(3) and (4).

72. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.1101, by:
- a. failing to comply with design standards to assure containment of the D006/D008 hazardous waste(s) managed therein, as required under 40 C.F.R. § 264.1101(a)(1), from March 24, 2010 through June 24, 2010;
 - b. not using necessary controls and practices to ensure containment of the D006/D008 hazardous waste within the Sludge Bunker containment building from March 24, 2010 through June 24, 2010 by failing to:
 - i. maintain the Sludge Bunker containment building primary barrier door to be free of significant cracks and gaps that could cause hazardous waste to be released from the primary barrier, as required under 40 C.F.R. § 264.1101(c)(1)(i);
 - ii. operate the Sludge Bunker containment building so as to prevent the tracking of hazardous waste out of the unit by personnel or equipment, as required under 40 C.F.R. § 264.1101(c)(1)(iii); and
 - iii. take measures to control fugitive dust emissions such that any openings exhibit no visible emissions, as required under 40 C.F.R. § 264.1101(c)(1)(iv);
 - c. failing to repair promptly the significant cracks and gaps in the Sludge Bunker containment building primary barrier door, which could lead to or has caused a release of hazardous waste from the Sludge Bunker containment building, from March 24, 2010 through June 24, 2010, in accordance with procedures required under 40 C.F.R. § 264.1101(c)(3); and
 - d. failing to conduct and record in the Facility's operating record, at least once every 7 days, inspections to detect signs of hazardous waste releases in and around the Facility's Sludge Bunker containment building during the periods of: November 14, 2007 through November 28, 2007; December 19, 2007 through January 4, 2008; September 5, 2008 through September 18, 2008; November 27, 2008 through December 17, 2008; June 30, 2009 through July 16, 2009; and November 19, 2009 through December 11, 2009, during which time periods D006/D008 hazardous waste was being stored therein by the Respondent, as required under 40 C.F.R. § 264.1101(c)(4).

COUNT VIII

(Failure to Provide Required Personnel Training)

73. The allegations of Paragraphs 1 through 72, above, are incorporated herein by reference as though fully set forth at length.
74. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(a) - (c), requires, in relevant part, that facility personnel must: (a) successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264; (b) complete such program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.
75. Respondent failed to ensure that five Facility employees whose duties included providing awareness training, Facility emergency coordination and signing hazardous waste manifests had successfully completed a required annual training review of their initial training in each of the calendar years 2006 through 2009, in accordance with the requirements of 40 C.F.R. § 264.16(c).
76. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.16(c), by failing to ensure that Facility personnel successfully completed a required annual training review of their initial training to teach them to perform their duties in a way that ensured the Facility's compliance with the requirements of 40 C.F.R. Part 264 during each of calendar years 2006 through 2009.

COUNT IX

(Failure to Maintain Personnel Training Documents and Records)

77. The allegations of Paragraphs 1 through 76 of this CA, are incorporated herein by reference as though fully set forth at length.
78. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(d)(1), (2), (3) and (4), requires, in relevant part, that the owner or operator must maintain the following documents and records at the facility: the job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job; a written job description for each position listed under 40 C.F.R. § 264.16(d)(1), including the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; 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 under 40 C.F.R. § 264.16(d)(1); and records that document that the

training or job experience required under 40 C.F.R. § 264.16(a), (b), and (c) has been given to, and completed by, Facility personnel.

79. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(e), further requires, in relevant part, that training records on current personnel be kept until closure of the Facility.
80. At the time of the March 24, 2010 Facility Inspection, Respondent failed to maintain documents and records at the Facility (which has not undergone RCRA “closure” within the meaning of 40 C.F.R. § 264.16(e)) for current employees that included a written job description for each position at the Facility related to hazardous waste management, as required pursuant to 40 C.F.R. § 264.16(d)(2) and (c).
81. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(2) and (e), by failing to maintain documents and records at the Facility for current employees that included a written job description for each position at the Facility related to hazardous waste management.

COUNT X

(Failure to Maintain Facility to Minimize Hazardous Waste Release)

82. The allegations of Paragraphs 1 through 81 of this CA, are incorporated herein by reference as though fully set forth at length.
83. 25 PA Code Section 264a.1 incorporates by reference 40 C.F.R. § 264.31 and provides, in relevant part, that “[f]acilities must be designed, constructed, maintained and operated to minimize the possibility of . . . any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”
84. At the time of the March 24, 2010 Facility Inspection, fugitive emissions of visible dust were observed escaping the Sludge Bunker containment building, directly to the outside environment, through gaps at the bottom of its doors, such that the Sludge Bunker containment building was not properly maintained and operated to minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air or soil.
85. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.31, by failing to properly maintain and operate the Sludge Bunker containment building at the Facility to minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air or soil.

IV. CIVIL PENALTY

86. Respondent agrees to pay a civil penalty in the amount of **Sixty Two Thousand Five Hundred Dollars (\$62,500.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CA. Such civil penalty shall become due and payable immediately upon Respondent’s 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, Respondent 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 Respondent.
87. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant’s consideration of a number of factors, including the penalty criteria 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. 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 Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
88. Payment of the civil penalty as required by paragraph 86, above, shall be made by either 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 (*Docket No. RCRA-03-2011-0177*).
 - b. All checks shall be made payable to “**United States Treasury**”.
 - c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

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

Contact: Bryson Lehman - (513-487-2123)

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. 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")

- 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. Additional payment guidance is available at:

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

h. On-Line Payment Option:

WWW.PAY.GOV

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

89. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, 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.

90. 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. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

91. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).
92. 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.
93. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
94. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

95. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the federally-authorized PaHWR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

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

VII. RESERVATION OF RIGHTS

97. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the 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.

VIII. FULL AND FINAL SATISFACTION

98. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

IX. PARTIES BOUND

99. This CA and the accompanying FO 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 CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

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

XI. ENTIRE AGREEMENT

101. 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.

In Re: Boyertown Foundry Company
RCRA I.D. No. PAR000036111

Consent Agreement
Docket No. RCRA-03-2011-0177

For Boyertown Foundry Company:

Date: 4-10-2011

By: 
Richard L. Riggs
President
Boyertown Foundry Company

In Re: Boyertown Foundry Company
RCRA I.D. No. PAR000036111

Consent Agreement
Docket No. RCRA-03-2011-0177


For the Complainant:

U.S. Environmental Protection Agency, Region III

Date:

5/11/2011

By:



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

After reviewing the EPA 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 FO.

Date:

5/10/11

By:


Abraham Ferdas, Director
Land and Chemicals Division