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

In the Matter of:	:	
	:	
AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 3301 Rosedale Avenue, Suite D Richmond, VA 23230	:	**U.S. EPA Docket No. RCRA-03-2020-0070**
	:	**Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)**
Respondent.	:	
	:	U.S. EPA-REGION 3-RHC FILED-25FEB2020PM1:00
AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 3301 Rosedale Avenue, Suite D Richmond, VA 23230	:	
Facility.		

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant") and AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company ("Respondent") (collectively the "Parties"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the 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. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into consent agreements to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant's civil penalty claims against Respondent under the Resource Conservation and Recovery Act ("RCRA" or the "Act") for the violations alleged herein.

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

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).

5. On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of Virginia's hazardous waste management program through this authorization, have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Amendments to the Virginia Hazardous Waste Management Regulations ("VHWMR") were reauthorized by EPA on June 20, 2003, on July 30, 2008 and again on November 4, 2013 (with revisions not relevant here), and the revisions became effective as requirements of RCRA Subtitle C on those dates. The provisions of Virginia's current authorized revised VHWMR are codified at 9 VAC-20-60-12 *et seq*.

6. When EPA last authorized the Virginia hazardous waste regulations on November 4, 2013, EPA approved Virginia's incorporation by reference of the then current federal regulations which were in effect as of July 1, 2010, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2010) is the currently enforceable version of that RCRA regulation in Virginia. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein are to the 2010 Federal regulations in effect at the time of the VHWMR were approved.

7. Virginia's universal waste regulations governing lamps have not yet been authorized by EPA. As a result, when EPA initiates an enforcement action for RCRA violations involving waste lamps in Virginia, such as the lamps at Respondent's facility, EPA cites to the federally-authorized Virginia regulations applicable to hazardous waste, set forth at 40 C.F.R. § 260.1 et seq. However, as an outcome of this enforcement action, both EPA and the Virginia Department of Environmental Quality ("VADEQ") expect Respondent to come into compliance with Virginia's universal waste regulations applicable to lamps, set forth at 9 VAC 20-60-273. These provisions incorporate by reference the federal regulations regarding universal waste lamps at 40 C.F.R. Part 273, and contain additional state requirements relating to waste lamps, including crushed lamps.

8. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, certain federally-authorized Virginia hazardous waste regulations, set forth at 9 VAC-20-60-12 *et seq*., in connection with Respondent's facility. Respondent's facility is located at 3301 Rosedale Avenue, Suite D, Richmond, VA 23230 ("Facility"), and is further described below.

9. Factual allegations or legal conclusions in this Consent Agreement that are based on provisions of federally-authorized VHWMR cite those respective provisions as the authority for such allegations or conclusions.

10. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated February 20, 2019, EPA notified the Virginia Department of Environmental Quality ("VADEQ") of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

GENERAL PROVISIONS

11. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

12. Except as provided in Paragraph 11, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.

13. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

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

15. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

16. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

18. Respondent is a corporation incorporated in the State of Delaware. Respondent is now, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260.A.

19. At the Facility, Respondent performs electronics and universal waste recycling. The Facility consists of approximately 40,000 square feet of building space. Respondent has been in operation at this location since 2013, as an electronics recycler. In 2014, Respondent began recycling waste lamps at the Facility.

20. On May 6, 2014, and again on May 30, 2017, AERC submitted notifications to VADEQ that the Facility was a small quantity generator ("SQG") of hazardous waste at the Facility, a large quantity handler ("LQH") of universal waste at the Facility, a transporter, and a transfer facility. The Facility was assigned RCRA ID No. VAR000528539. Respondent does not have a permit for the treatment, storage or disposal of hazardous waste at the Facility.

21. On August 22, 2017, Respondent stored hazardous waste at a "facility," as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.

22. On August 22, 2017, Respondent was the "operator" and the "owner" of a "facility," described in Paragraph 19, as the terms "facility", "owner" and "operator" are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.

23. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, a "generator" of, and has engaged in the accumulation in "containers" at the Facility of materials described below that are "solid wastes" and "hazardous wastes," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 9 VAC 20-60-260.A.

24. On August 22, 2017, an inspector from the U.S. Environmental Protection Agency, Region III ("EPA") conducted a Compliance Evaluation Inspection at the Facility ("Inspection"), to examine the Facility's compliance with Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 et seq., the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Commonwealth of Virginia Hazardous Waste Management Program, 9 VAC-20-60-12 et seq.

25. To gather additional information about the issues raised during the Inspection, and to request documents, EPA sent an information request letter ("IRL") to Respondent, dated August 16, 2019, pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent responded to this request in a letter dated September 16, 2019.

26. Along with the IRL, on August 16, 2019, EPA also sent a Request to Show Cause ("Show Cause letter") to Respondent advising it of EPA's preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent's compliance with the VHWMR at the Facility. On October 22, 2019, representatives of EPA and Respondent met to discuss the violations alleged in the Show Cause letter.

27. On the basis of EPA's findings during the Inspection and Respondent's responses to EPA's Show Cause letter and IRL, EPA concludes that Respondent has violated certain

requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized VHWMR requirements promulgated thereunder.

Count I
(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

28. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

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

30. Respondent has never had a permit or interim status, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), for the storage of hazardous waste at the Facility.

Generator Storage of Hazardous Waste (the "Generator Permit Exemption")

31. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R.§ 262.34(a) (2010) (recently recodified in 40 C.F.R. § 262.16(a)), with exceptions not relevant here, provides:

> [A] generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed: (i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or
>
> * * *
>
> (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
>
> (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste" . . .

Generator Permit Exemption: Failure to Mark Each Container of Waste Lamps with the Required Words

32. At the time of the Inspection on August 22, 2017, Respondent had failed to label or mark clearly a number of containers of hazardous waste lamps with the proscribed words, as required by 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(3) (recently recodified at 40 C.F.R. § 262.16(b)(6)).

33. For compliance purposes, 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.34 (pertaining to "Standards for Large Quantity Handlers of Universal Waste; Labeling/Marking"), requires:

> A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:
>
> * * *
>
> (e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".

34. At the time of the Inspection on August 22, 2017, throughout the universal waste storage areas of the Facility, there were many boxes that were stored in a manner that prevented the inspector from observing whether they were properly labeled and dated.

35. At a minimum, Respondent failed to label or mark clearly, with the required words, the following containers:

    a. One 5-foot cylindrical cardboard box;

    b. One white rectangular box;

    c. Approximately 20 individual boxes of waste lamps, which comprise the bottom of a large stack of boxes; and

    d. In the Repackage for Smaller Items Area, two 5-gallon containers of waste lamps.

Generator Permit Exemption: Failure to Mark Each Container of Waste Lamps with the Date that Accumulation Began

36. At the time of the Inspection on August 22, 2017, Respondent had also failed to mark many containers of waste lamps with the date upon which each period of accumulation began, as required by 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(2) (recently recodified at 40 C.F.R. § 262.16(b)(6)(C)).

37. Furthermore, for compliance purposes, 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.35 (pertaining to "Standards for Large Quantity Handlers of Universal Waste; Accumulation Time Limits"), requires:

> (c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
>
> (1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

38. At the time of the Inspection on August 22, 2017, there were many boxes that were stored in a manner that prevented the inspector from observing whether the boxes were properly dated.

39. At a minimum, Respondent failed to mark with the date upon which accumulation began, or otherwise track the accumulation start date for, the following containers of hazardous waste lamps:

a. One 5-foot cylindrical cardboard box

b. One white rectangular box;

c. A cylindrical cardboard container;

d. A brown cardboard container, sitting on top of a stack of white cardboard containers;

e. A stack of approximately 31 containers, each containing approximately 25 waste lamps; and

f. A leaning stack of rectangular cardboard containers, storing a total of approximately 425 lamps.

40. Respondent failed to maintain a tracking system documenting the length of time the containers are accumulated on site.

41. At the time of the Inspection on August 22, 2017, many of the labels on containers at the Facility were customers-affixed labels with accumulation start dates that did not correspond to the actual accumulation start date of the container at Respondent's Facility.

Generator Permit Exemption: Failure to Meet Other Requirements of Generator Accumulation Exemption

42. Respondent failed to comply with the generator accumulation exemption to the permit requirement, found in 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34 (recently recodified at 40 C.F.R. § 262.16(b)) (pertaining to Accumulation), because it failed to comply with all of the conditions of this exemption.

43. The following acts or omissions, which occurred at the time of the Inspection on August 22, 2017, prevented Respondent from meeting the regulatory permit exemption requirements:

    a. Respondent failed to keep several hazardous waste containers closed except when it is necessary to add or remove waste, as required by 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173, as further described in Count II, below.

    b. Respondent also failed to minimize possibility of release of hazardous waste, as required by 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, and failed to immediately contain all releases of hazardous waste, as required by 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.51(b). These conditions are further described in Count III, below.

44. The requirements of 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, apply to the Facility because it failed to meet several conditions of the permit exemption.

45. On August 22, 2017, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270, by storing hazardous waste at the Facility without a permit.

Count II
(Failure to Keep Containers Storing Waste Lamps Closed Except When it is Necessary to Add or Remove Waste)

46. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

47. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173 (pertaining to "Management of Containers"), with exceptions not relevant herein, "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

48. For compliance purposes, 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.33(d) (pertaining to "Standards for Large Quantity Handlers of Universal Waste; Waste Management") provides:

(d) Lamps. A large 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 large 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.

49. At the time of the Inspection on August 22, 2017, Respondent was storing, at a minimum, the following containers, which were holding waste lamps. These containers were not meeting the requirements described above, at a time when Respondent was not adding or removing waste.

a. Cylindrical cardboard box with a broken lid, which was storing approximately185 lamps.

b. Two 55-gallon containers stacked together, end to end, to make one container, which was storing approximately 185 lamps. The tape connecting the containers was broken, and the containers were seperated.

c. A green cylindrical cardboard container with an open lid.

d. A stack of 78 rectangular boxes, each storing approximately 25 lamps. At least two of these boxes were broken. The inspector was not able to observe the condition of all the boxes, due to the way that they were stacked and wrapped.

e. A rectangular, brown cardboard container was broken.

f. Stack of 10 boxes of differing sizes, on a wooden pallet. Nine out of the 10 boxes were open.

g. Stack of 40 rectangular cardboard containers on a wooden pallet. Each container was storing approximately 25 lamps. The stack was leaning to the left, and there were at least 8 broken containers.

h. Stack of 20 rectangular containers. Each container was storing approximately 25 lamps. The stack was leaning, and at least 3 containers were broken or open.

i. Stack of 49 rectangular cardboard containers. Each container was storing approximately 10-25 lamps. The stack was leaning, and there was at least 1 smashed container, 1 broken container, and 5 open containers.

j. Stack of crushed containers.

k. Deformed large cardboard container with a broken top, was sitting on top of stack of containers, none of which were in good condition.

l. Two stacks of containers, with one stack sitting on top of the bottom stack. The bottom stack of 31 rectangular containers, each contained approximately 25 lamps. Seven of these containers were open, and 1 had lamps sticking out of it.

m. At the bottom of a stack of 7 containers, there was a broken and smashed rectangular container.

n. In a stack of 3 containers storing lamps, there were holes in the cardboard box at the bottom of the stack.

o. An inclined stack of containers storing approximately 425 lamps appeared to be falling over and leaning on another stack of lamps.

p. 17 spent lamps were sticking out of containers or not in container at all.

q. Broken container with stains and crushed lamps on the floor.

r. There were many additional open containers, not specifically described above. Because of the way that many of the containers were stacked, the inspector was unable to individually inspect many of these containers.

50. On August 22, 2017, AERC violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173 (as well as the requirements of 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.33(d)(1)), by failing to keep numerous containers of waste lamps structurally sound, closed during storage except when it was necessary to add or remove waste, and lacking damage that could cause leakage.

Count III
(Failure Minimize Risk of Release, and Failure to Immediately Contain All Releases of Waste Lamps)

51. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

52. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, (pertaining to Design and Operation of Facility): "Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

53. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.51(b) (pertaining to Purpose and Implementation of Contingency Plan), requires: "The provisions of the

[continency] plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment."

54. Additionally, 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.33(d) (pertaining to "Standards for Large Quantity Handlers of Universal Waste; Waste Management") provides:

(d) Lamps. A large 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:

* * *

(2) A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

55. At the time of the Inspection on August 22, 2017, there were numerous boxes of waste lamps that were smashed and/or open. There were stains on floors from leaks of crushed lamps, as well as crushed lamps on the floor of the Facility. There were containers of waste lamps stacked that were leaning or falling over. This failure to minimize the risk of release is evidenced by the open containers described above in Count II.

56. On August 22, 2017, Respondent violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, by failing to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents at the Facility to air, soil, or surface water which could threaten human health or the environment.

57. Furthermore, on August 22, 2017, Respondent also violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.51(b), as well as the requirements of 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.33(d)(2), by failing to immediately clean up broken waste lamps and releases of this lamp waste.

CIVIL PENALTY

58. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TEN THOUSAND DOLLARS ($10,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

59. The civil penalty settlement amount set forth in Paragraph 58, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which 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). Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

60. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket No. RCRA-03-2020-0070;

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

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

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

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

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

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

Natalie L. Katz
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
katz.natalie@epa.gov

61. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to

cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

62. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

63. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within 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).

64. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

65. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

66. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

<u>SUPPLEMENTAL ENVIRONMENTAL PROJECT</u>

67. Within ninety (90) days from the effective date of this Consent Agreement and Final Order, Respondent will conduct an electronics recycling event (or events) within and in coordination with the City of Richmond, Virginia. The cost of publicizing and hosting the electronics recycling event shall be no less than FOURTY THOUSAND DOLLARS ($40,000.00).

   a. Respondent will advertise the event(s) to the public.

b. During the recycling event(s), Respondent will collect, at no cost to the public, household electronics including bulbs, computer equipment, microwaves, televisions, computers, computer monitors, and other miscellaneous household electronics.

c. Respondent will host the recycling event(s) for a minimum of four (4) hours.

68. This Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines.

69. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is no less than $40,000;

b. That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;

d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 67, above; and

h. That Respondent has inquired of the SEP recipient, the City of Richmond, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the City of Richmond that it is not a party to such a transaction.

i. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution shall include the following language: "This

project was undertaken in connection with the settlement of an administrative enforcement action taken on behalf of the U.S. Environmental Protection Agency to enforce federal laws."

70. Respondent shall submit a SEP Completion Report to Rebecca Serfass (3ED22), with a copy to Natalie Katz (3RC40) U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, within thirty (30) days from completion of the SEP. The SEP Completion Report shall provide:

a. Notice to EPA of the completion;

b. A detailed description of the SEP as conducted, including a summary of the electronics collected and photographs of the event;

c. A description of the environmental and public health benefits resulting from implementation of the SEP;

d. Itemized costs incurred and amounts expended;

i. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.
ii. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such.
iii. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made; and

c. A certification: Respondent shall, by its representative officer, sign the SEP Completion Report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

71. Upon receipt of the SEP Completion Report identified in Paragraph 70, above, EPA will provide written notification to the Respondent of one of the following:

a. If the SEP Completion Report is deficient, notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;

b. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has been completed in accordance with the Consent Agreement and Final Order, notify the Respondent in writing that EPA has concluded that the project has been completed in accordance with this Consent Agreement and Final Order; or

c. If the SEP Completion Report demonstrates, and EPA agrees based on the SEP Completion Report and any other information available, that the SEP has not been completed in accordance with this Consent Agreement and Final Order, notify the Respondent in writing that EPA has concluded that the project has not been completed in accordance with this Consent Agreement and Final Order and grant Respondent an additional fourteen (14) calendar days to complete the SEP in accordance with this Consent Agreement and Final Order. If the SEP is not completed within such time period, EPA may seek stipulated penalties in accordance with Paragraphs 73 through 75, below.

72. If EPA provides notification in accordance with Paragraph 71.c., above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) calendar day period, the Director of the Enforcement and Compliance Assurance Division for EPA, Region III, shall provide to the Respondent a written statement of her decision on the adequacy of the completion of the SEP, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this Consent Agreement and Final Order, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 73 through 75, below.

73. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement and Final Order relating to the performance of the SEP, described in Paragraph 67, above, submission of the SEP Completion Report, described in Paragraph 70, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 67, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) below, if the SEP has not been completed in accordance with Paragraph 67, above, Respondent shall pay a stipulated penalty to EPA in the amount of FIFTY THOUSAND DOLLARS ($50,000.00);

b. If the SEP is not completed in accordance with Paragraph 67, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to complete the project; and (ii) Respondent certifies, with supporting

documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

c. If the SEP is completed in accordance with Paragraph 67, above, and the SEP Completion Report is submitted in accordance with Paragraph 70, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of FORTY THOUSAND DOLLARS ($40,000.00) minus that amount of money that Respondent spent on the project;

d. If the SEP is completed in accordance with Paragraph 67, above, the SEP Completion Report is submitted in accordance with Paragraph 70, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty; and

e. If the SEP is completed in accordance with Paragraph 67, but Respondent fails to submit the SEP Completion Report required by Paragraph 70, above, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS ($500.00) for each day after the report was originally due until the report is submitted.

74. The determination of whether the SEP has been completed in accordance with Paragraph 67, above, and whether the Respondent has made a good faith, timely effort to complete the SEP shall be in the sole discretion of EPA. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

75. Respondent shall pay stipulated penalties within fourteen (14) calendar days of receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 63 through 65, above, if Respondent fails to pay the assessed stipulated penalties within fourteen (14) calendar days of receipt of EPA's written demand.

GENERAL SETTLEMENT CONDITIONS

76. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

77. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute

further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

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

OTHER APPLICABLE LAWS

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

RESERVATION OF RIGHTS

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

EXECUTION /PARTIES BOUND

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

ENTIRE AGREEMENT

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

For Respondent: **AERC ACQUISITION CORPORATION, DBA AERC RECYCLING SOLUTIONS, A CLEAN EARTH COMPANY**

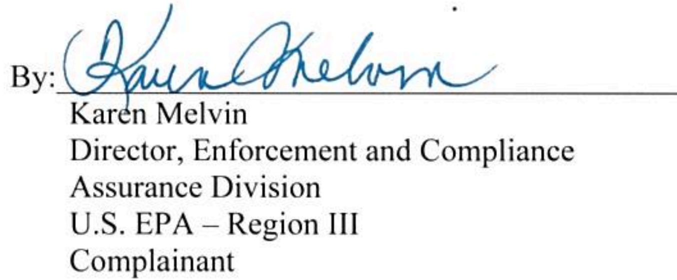
Date: 2/17/2020

By:
Christopher J. Stump
CFO, Clean Earth LLC

For the Complainant: **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III**

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

Date: FEB 24 2020



By: ______________________
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 2/18/2020

By: ______________________
Natalie L. Katz
Sr. Assistant Regional Counsel
U.S. EPA – Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
	:	
AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 3301 Rosedale Avenue, Suite D Richmond, VA 23230	:	**U.S. EPA Docket No. RCRA-03-2020-0070**
	:	**Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)**
Respondent.	:	
AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 3301 Rosedale Avenue, Suite D Richmond, VA 23230	:	
Facility.	:	

U.S. EPA-REGION 3-RHC
FILED-25FEB2020PM1:00

FINAL ORDER

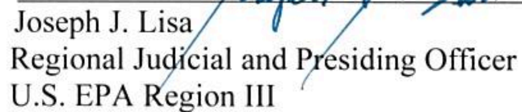
Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, AERC Acquisition Corporation have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and the statutory factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TEN THOUSAND DOLLARS ($10,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

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



Feb. 25, 2020
Date

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

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

In the Matter of:	:	
	:	
AERC Acquisition Corporation	:	**U.S. EPA Docket No. RCRA-03-2020-0070**
dba AERC Recycling Solutions,	:	
A Clean Earth Company	:	**Proceeding under Section 3008(a) and (g)**
3301 Rosedale Avenue, Suite D	:	**of the Resource Conservation and Recovery Act, as**
Richmond, VA 23230	:	**amended, 42 U.S.C. § 6928(a) and (g)**
	:	
Respondent.	:	
	:	
AERC Acquisition Corporation	:	
dba AERC Recycling Solutions,	:	
A Clean Earth Company	:	
3301 Rosedale Avenue, Suite D	:	
Richmond, VA 23230		
Facility.		

CERTIFICATE OF SERVICE

I certify that on FEB 25 2020, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, to:

Mark Kasper
AERC Acquisition Corporation
dba AERC Recycling Solutions,
A Clean Earth Company
3301 Rosedale Avenue, Suite D
Richmond, VA 23230

Cheryl Coffee
Director of Environmental & Compliance
AERC Acquisition Corporation
dba AERC Recycling Solutions,
A Clean Earth Company
334 South Warminster Road
Hatboro, PA 19040

Copies served via Hand Delivery or Inter-Office Mail to:

Natalie L. Katz
Senior Assistant Regional Counsel
ORC – 3RC40
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Rebecca Serfass
Life Scientist / Enforcement Officer
ECAD – 3ED22
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: FEB 25 2020

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 70172620000091433207
70172620000091433191