

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

In the Matter of:)
)
Fuchs Lubricants Co.,) **Docket No. RCRA-07-2021-0050**
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and Fuchs Lubricants Company (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Kansas Statute Annotated 65-3431, Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, and Kansas regulations which incorporate by reference certain federal regulations for the standards applicable to generators of hazardous waste (40 C.F.R. Part 262).

Parties

3. Complainant is the Chief of the Chemical Branch, in the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Fuchs Lubricants Co., a Delaware corporation authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
13. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
14. “Solid waste” is defined at 40 C.F.R § 261.2.
15. “Hazardous waste” is defined at 40 C.F.R. § 261.3.
16. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
17. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).
18. The regulation at 40 C.F.R § 262.34(a)(1)(i) requires generators accumulating hazardous waste in containers to comply with, in pertinent part, the applicable requirements of subparts I, AA, BB, and CC of 40 C.F.R Part 265.
19. The regulation at 40 C.F.R. § 265.1050, at subpart BB, requires monitoring equipment for leaks and repair of detected leaks.
20. The regulation at 40 C.F.R. § 265.1051, as it references 40 C.F.R. § 264.1031, defines the term “in light liquid service” to mean that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.
21. The regulations at 40 C.F.R. §§ 265.1052, 265.1057, and 265.1058 set forth the monitoring and repair requirements for pumps in light liquid service, valves in light liquid service, and connectors, respectively. The monitoring for pumps, valves and connectors to detect a leak utilize Method 21. The Method 21 requirements are found at 40 C.F.R. Part 60, Appendix A, Method 21.
22. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28,

Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of a hazardous waste program requirement pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

23. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$76,746 for violations that occur after November 2, 2015, and are assessed on or after December 20, 2020. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

24. Respondent is a corporation and authorized to conduct business within the State of Kansas. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

25. Respondent owns and operates a facility located at 2340 South 88th Street in Kansas City, Kansas (“facility”). Respondent manufactures lubricating oils and greases and warehouses and ships the products to other distribution locations. Respondent’s facility employs approximately 53 people at this location, including approximately ten contractors.

26. On or about February 7, 2019, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, and the Kansas Department of Health and Environment (“KDHE”), pursuant to K.A.R. 28-31-260a(a)(9), as a Large Quantity Generator (LQG) of hazardous waste. Pursuant to K.A.R. 28-31-260a(a)(9), large quantity generators generate 1,000 kilograms (2,200 pounds) or more of hazardous waste in any calendar month, or generate or accumulate one (1) kilogram or more of acutely hazardous waste.

27. On or about January 6-7, 2020, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (“inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at

the time of the inspection, as a LQG of hazardous waste, a used oil generator, and a Small Quantity Handler of universal waste.

28. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3:

- (a) Various spent solvents, carrying the hazardous waste codes D001, F003 and F005.
- (b) Spent Karl-Fisher reagent, carrying the hazardous waste code D002.
- (c) Spent auto-viscometer, carrying the hazardous waste code D002.
- (d) Spent tetrachloroethylene, carrying the hazardous waste code F001.
- (e) Spent isopropyl alcohol-IPA (IPA), carrying the hazardous waste code D001, with an organic concentration of more than 10% according to facility process knowledge (based upon ignitability).

29. Respondent accumulates spent isopropyl alcohol-IPA in two 330-gallon totes near the process area for the manufacture of aluminum complex grease.

30. At the time of the inspection, the two containers were being filled through an opening in each container's closure device. The inspector observed one container had a visible gap around the fill pipe, smelled the odor of isopropyl alcohol, and observed vapor emissions with the use of an EPA IR camera.

31. Respondent's facility includes one pump, seven valves in light liquid service, and seven connectors in light liquid service.

32. At the time of the inspection, Respondent used a 'sniffer' instrument to monitor leaks at the facility. The 'sniffer' was not calibrated consistent with Reference Method 21.

33. At the time of the inspection, Respondent did not have a permit or interim status.

34. Respondent has been assigned the following EPA ID Number: KSD002288736.

Violations

35. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

36. Complainant hereby incorporates the allegations contained in Paragraphs 24 through 34 above, as if fully set forth herein.

37. Section 3005 of RCRA, 42 U.S.C. § 6925, Kansas Statute Annotated 65-3431 and the regulations at 40 C.F.R. Part 270 and K.A.R. 28-31-270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

Generator Requirements

38. The regulations at 40 C.F.R. § 262.34(a), incorporated by K.A.R. 28-31-262(a), state that an LQG may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time without a permit. Respondent failed to comply with the following conditions:

Failure to date hazardous waste accumulation containers

39. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(2), incorporated by K.A.R. 28-31-262(a), require generators to clearly mark the date upon which each period of accumulation began on each container.

40. At the time of the inspection, four 330-gallon totes of hazardous waste accumulation containers with waste isopropyl alcohol-IPA were not marked with the date upon which accumulation began.

Failure to label hazardous waste accumulation containers

41. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(3), incorporated by K.A.R. 28-31-262(a), require generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

42. At the time of the inspection, four 330-gallon totes of hazardous waste accumulation containers with waste isopropyl alcohol-IPA were not marked with the words "Hazardous Waste."

Failure to maintain adequate aisle space

43. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(4), incorporated by K.A.R. 28-31-262(a), require, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

44. Pursuant to 40 C.F.R. § 265.35, as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel,

fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

45. At the time of the inspection, it was discovered that Respondent failed to maintain adequate aisle space in the hazardous waste accumulation area where Respondent was accumulating twenty-one (21) 330-gallon totes of waste isopropyl alcohol-IPA. Approximately eighteen (18) inches of space separated hazardous waste accumulation contains which would not allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment.

Failure to conduct monthly monitoring on pumps in light service for leaks per Reference Method 21

46. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1052(a)(1), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that a generator conduct monthly monitoring on pumps in light service for leaks per Reference Method 21.

47. At the time of the inspection, Respondent was not conducting monthly monitoring for leaks on the one pump in light service.

Failure to conduct weekly visual inspections on pumps in light service for liquids dripping from pump seals

48. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1052(a)(2), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that a generator conduct weekly visual inspections on pumps in light service for indications of liquids dripping from pump seals.

49. At the time of the inspection, Respondent was not conducting weekly visual inspections on the one pump in light service for the indication of liquids dripping from pump seals.

Failure to conduct monthly monitoring on valves in light service for leaks per Reference Method 21

50. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1057(a), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that a generator conduct monthly monitoring on each valve in light service for leaks per Reference Method 21.

51. At the time of the inspection, Respondent was not conducting monthly monitoring on each of the seven valves in light service for leaks.

*Failure to conduct leak detection monitoring
per Reference Method 21*

52. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1063(b), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that a generator conduct leak detection monitoring per Reference Method 21.

53. At the time of the inspection, Respondent's leak detection instrument, referred to as a 'sniffer,' used to conduct leak detection on pumps, valves, and connectors whenever an employee smelled isopropyl alcohol, was not calibrated consistent with Reference Method 21.

*Failure to record required information in the facility operating record
for each piece of equipment to which Subpart BB of Part 265 applies*

54. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1064(b)(1), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that a generator record the following information for each piece of equipment to which subpart BB of part 265 applies: (i) Equipment identification number and hazardous waste management unit identification; (ii) Approximate locations within the facility; (iii) Type of equipment; (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment; (v) Hazardous waste state at the equipment; and (vi) Method of compliance with the standard.

55. At the time of the inspection, Respondent had failed to keep the aforementioned records for each piece of equipment to which Subpart BB of Part 265 applies.

Failure to Minimize Hazardous Waste Air Emissions

56. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), referencing 40 C.F.R. § 265.1087(d)(2), incorporated by K.A.R. 28-31-262(a) and K.A.R. 28-31-265(a), require that the transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials.

57. At the time of the inspection, a fill pipe and a 330-gallon container of waste isopropyl alcohol-IPA were using Container Level 2 controls. The 330-gallon container volume was 1,250 liters or 1.25 cubic meters. The organic concentration of the waste isopropyl alcohol exceeds 10% by weight. The concentration of isopropyl alcohol is 40 to 90% and vapor pressure as 5.3 kilopascals at 23.8 degrees Celsius. Therefore the 330-gallon container is in light material service. A container accumulating hazardous waste that is greater than 0.46 cubic meters in volume and in light material service is subject to level 2 container standards in 40 C.F.R. § 265.1087(d).

58. At the time of the inspection, two 330-gallon containers were being filled with waste isopropyl alcohol-IPA through an opening in each container's closure device.

59. The inspector observed a visible gap between the fill pipe and one of the 330-gallon containers of waste isopropyl alcohol-IPA. The inspector also smelled the odor of isopropyl alcohol.

60. The inspector viewed vapor emissions releasing between the fill pipe and one of the 330-gallon containers of waste isopropyl alcohol-IPA. The vapor emissions were viewed and recorded utilizing a flame ionization detector (FID), Thermo Fisher Scientific TVA-2020, which was calibrated and operated utilizing Reference Method 21.

Failure to list emergency coordinator information in contingency plan

61. In order to be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(4), incorporated by K.A.R. 28-31-262(a), require, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

62. Pursuant to 40 C.F.R. § 265.54(d), as found in 40 C.F.R. Part 265, Subpart D, the contingency plan must be reviewed, and immediately amended, if necessary, whenever the list of emergency coordinators changes.

63. At the time of the inspection, the individual identified in the contingency plan as the emergency coordinator was no longer employed by Respondent and the contingency plan was not amended with the name of the new emergency coordinator.

Storage Over Ninety Days

64. The regulations at 40 C.F.R. § 262.34(b), incorporated by K.A.R. 28-31-262(a), state that a generator who accumulates hazardous wastes for more than ninety (90) days is an operator of a storage facility and must comply with 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless it has been granted an extension to the ninety (90) day period. Facilities classified as "Large Quantity Generators" may accumulate hazardous waste at their facilities without a permit for no more than ninety (90) days.

65. At the time of the inspection, Respondent had been storing two, 330-gallon totes of waste isopropyl alcohol-IPA in the storage shed for more than ninety (90) days.

66. By storing hazardous waste on-site for greater than 90 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265, and the permit requirements of 40 C.F.R. Part 270.

67. Because Respondent failed to comply with the conditions for exemption from permitting and operating requirements as set forth in Paragraphs 38 through 66 above, Respondent was not authorized to store hazardous waste at the Facility, and therefore was

operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and Kansas Statute Annotated 65-3431.

Count 2

Failure to Comply with Universal Waste Management Requirements

68. Complainant hereby incorporates the allegations contained in Paragraphs 24 through 34 above, as if fully set forth herein.

Failure to label universal waste containers

69. The regulations at 40 C.F.R. § 273.14(e), incorporated by K.A.R. 28-31-273(a), require small quantity handlers of universal waste to clearly label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: “Universal Waste-Lamp(s)” or “Waste Lamp(s),” or “Used Lamp(s).”

70. At the time of the inspection, three non-containerized four-foot universal waste-lamps were not properly labeled or marked.

71. Respondent’s failure to properly label the universal waste lamp containers described above is a violation of 40 C.F.R. § 273.14(e), as incorporated by K.A.R. 28-31-273(a).

Failure to close universal waste containers

72. The regulations at 40 C.F.R. § 273.13(d)(1), incorporated by K.A.R. 28-31-273(a), require a small quantity handler of universal waste to manage lamps in a way that prevents releases by containing the lamps 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.

73. At the time of the inspection, Respondent failed to close the following containers or packages to prevent releases and breakage:

- (a) One open eight-foot cardboard container of universal waste-lamps.
- (b) Two open four-foot cardboard containers of universal waste-lamps.
- (c) Three non-containerized/unlabeled four-foot universal waste-lamps.

74. Respondent’s failure to close the universal waste containers or packages described above to prevent releases and breakage is a violation of 40 C.F.R. § 273.13(d)(1), as incorporated by K.A.R. 28-31-273(a).

The length of time of universal accumulation not demonstrated

75. The regulations at 40 C.F.R. § 273.15(c), incorporated by K.A.R. 28-31-273(a), state that a small 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.

76. At the time of the inspection, Respondent was unable to demonstrate the length of time the following containers of universal waste had been accumulating:

- (a) One open eight-foot cardboard container of universal waste-lamps.
- (b) Two open four-foot cardboard containers of universal waste-lamps.
- (c) Three non-containerized/unlabeled four-foot universal waste-lamps.

77. Respondent's failure to demonstrate the length of time that the universal waste described above began accumulating is a violation of 40 C.F.R. § 273.15(c), as incorporated by K.A.R. 28-31-273(a).

CONSENT AGREEMENT

78. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

79. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and performance of the compliance actions described below.

80. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

81. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

82. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *Christian.Bigelow@fuchs.com* and *BKeys@Foley.com*.

Penalty Payment

83. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Two Hundred Fifty-Five Thousand Three Hundred Forty-Four Dollars (\$255,344), as set forth below.

84. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

85. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kelley Catlin, Attorney
catlin.kelley@epa.gov.

86. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year

compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

87. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

88. Within one hundred and twenty (120) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the following documentation to EPA:

- a. For the ninety (90) days after the Effective Date of this Consent Agreement and Final Order, Respondent shall provide documentation of isopropyl alcohol-IPA sent off-site for continued use. Documentation shall include the following information:
 - i. Quantity of isopropyl alcohol-IPA sent off-site.
 - ii. Date of off-site shipments of isopropyl alcohol-IPA.
 - iii. Name and address of the vendor accepting the isopropyl alcohol-IPA.
 - iv. The date and quantity of isopropyl alcohol-IPA not accepted by vendor and either returned to Respondent or sent to alternate facility for hazardous waste disposal.

89. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide documentation of an amended contingency plan noting the updated list of emergency coordinators.

90. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide documentation (including photographs) to show proper management of all universal waste-lamps (closed containers, labeling, and system for tracking the length of time of accumulation).

91. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph (both electronically and in hard copy) to the following addresses:

Mike Martin, ECAD/CB/RCRA Section
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
martin.mike@epa.gov.

Effect of Settlement and Reservation of Rights

92. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged

herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

93. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

94. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

95. Full payment of the penalty proposed in this Consent Agreement 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 law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

96. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty-One Thousand Eight Hundred and Twenty Dollars (\$61,820) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

97. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

98. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

99. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

100. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

101. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

102. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

103. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

104. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

105. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

RESPONDENT:

FUCHS LUBRICANTS CO.

26 Apr 2021
Date

Christian D. Bigelow
Signature

Christian D. Bigelow
Printed Name

VP Legal
Title

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date

Kelley Catlin
Office of Regional Counsel

FINAL ORDER

Pursuant to Sections 3008(a) and (g) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date