

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**



In the Matter of:	:
	:
KINGSBURY, INC.	: U.S. EPA Docket No. RCRA-03-2025-0014
10385 DRUMMOND ROAD	:
PHILADELPHIA, PENNSYLVANIA 19154	: Proceeding under Sections 3008(a) and (g) of the
	: Resource Conservation and Recovery Act, 42
Respondent.	: U.S.C. §§ 6928(a) and (g)
	:
KINGSBURY, INC./MESSINGER BEARINGS	:
10385 DRUMMOND ROAD	:
PHILADELPHIA, PENNSYLVANIA 19154,	:
	:
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 3 ("Complainant") and Kingsbury, Inc. ("Respondent") (collectively the "Parties"), pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 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. Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), authorize 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 agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under RCRA 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 (“EPA”) 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. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2), the EPA has given notice to the Pennsylvania Department of Environmental Protection (“PADEP”) of the EPA’s intent to commence this administrative action against Respondent.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of the 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.
9. 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.
10. 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.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
12. By signing this Consent Agreement, Respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court,

including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Effective January 30, 1986, and as revised November 27, 2000, March 22, 2004, and June 29, 2009, the EPA authorized the Commonwealth of Pennsylvania to administer its Hazardous Waste management program (“PaHWR”) in lieu of the federal program, including certain provisions implementing the Hazardous and Solid Waste Amendments enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. The authorized provisions of the Pennsylvania Hazardous Waste Regulations (“PaHWR”) codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a, thereby became requirements of Subtitle C of RCRA and enforceable by the EPA pursuant to Section 32008(a) if RCRA, 42 U.S.C. § 6928(a). *See* 51 Fed. Reg. 1791 (January 15, 1986), 65 Fed. Reg. 57734 (September 26, 2000), 69 Fed. Reg. 2674 (January 20, 2004), and 74 Fed. Reg. 19453 (April 29, 2009).
15. Respondent is a Delaware corporation with headquarters located at 10385 Drummond Road in Philadelphia, Pennsylvania.
16. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10, and is subject to the assessment of civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) for the violations alleged herein.
17. At all times relevant to the violations alleged in this Consent Agreement, Respondent owned or operated a manufacturing facility for fluid-film and rolling element bearings located at 10385 Drummond Road in Philadelphia, Pennsylvania (hereinafter “the Facility”), and was an “owner” and “operator” of a “facility” as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, and/or as defined in 25 Pa. Code § 260a.10.
18. Respondent is a “generator” of “solid wastes” and “Hazardous Wastes,” and has engaged in the “storage” in “containers” at the Facility of Hazardous Wastes as those terms are defined in 25 Pa. Code § 260a.10 and 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, including but not limited to, Hazardous Wastes having EPA Hazardous Waste codes D001, D002, and D006, as

specified in 40 C.F.R. §§ 261.21-.24, incorporated by reference in 25 Pa. Code § 261a.1.

19. The Facility is assigned EPA RCRA ID. No. PAD002275535.
20. At all times relevant to the violations alleged in this Consent Agreement, Respondent was a universal waste handler who did not accumulate 5,000 kilograms or more total of universal waste and was a “Small Quantity Handler of Universal Waste” as this term is defined in 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1.
21. On June 27, 2023, the EPA conducted a compliance evaluation inspection of the Facility (“the Inspection”) to determine Respondent’s compliance with RCRA Subtitle C and the PaHWR.
22. On October 5, 2023, the EPA sent an Information Request letter (“IRL”) to Respondent. On November 7, 2023, Respondent responded to the IRL.
23. On November 24, 2023, the EPA sent an email to Respondent, asking for clarifications on the IRL response. On December 11, 2023, Respondent responded via letter.
24. On August 13, 2024, the EPA issued a Notice to Show Cause to Respondent identifying potential RCRA violations at the Facility, including the violations alleged herein.
25. On August 27, 2024, Respondent provided a written response to the Notice to Show Cause, providing additional information to the EPA relating to the alleged violations and corrective action taken.

Count 1

Operating Without a Permit or Interim Status

26. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
27. Sections 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, require that 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.

28. Respondent failed to have either a Hazardous Waste permit pursuant to 40 C.F.R. § 270.1(b), which 25 Pa. Code § 270a.1 incorporates by reference, or interim status pursuant to 40 C.F.R. § 265.1(b), which 25 Pa. Code § 265a.1 incorporates by reference, at any time during the period when violations are alleged.
29. Pursuant to 40 C.F.R. § 262.34(a),¹ which 25 Pa. Code § 262a.10 incorporates by reference, “a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that” the generator meets requirements listed in 40 C.F.R. § 262.34.
30. For the following reasons, Respondent failed to meet the requirements listed in 40 C.F.R. § 262.34 and was therefore accumulating hazardous waste on site in violation of 40 C.F.R. § 270.1(b), which 25 Pa. Code § 270a.1 incorporates by reference:
 - a. Failure to Properly Label and/or Date Containers of Hazardous Waste
 - i. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), with exceptions not relevant herein, provides that a generator may accumulate Hazardous Waste on-site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. § 262.34(a)(2) and (3), which require “the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container” and “each container and tank [of Hazardous Waste] is labeled or marked clearly with the words, ‘Hazardous Waste.’”
 - ii. At the time of Inspection, the EPA inspectors observed six loose Hazardous Waste D001 aerosol cans on the lid of a drum in the “Rag Collection” area, which were not labeled as Hazardous Waste nor were they dated.

¹ When the EPA last authorized the PaHWR on June 29, 2009, the EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, 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 (2005) is the current federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, the 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 2005 Federal regulations.

- iii. At the time of Inspection, the EPA inspectors observed a 55-gallon drum of Hazardous Waste D001 paint waste in the “Rag Collection” area that was not dated.

b. Failure to Keep Containers of Hazardous Waste Closed

- i. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), provides that a generator may accumulate Hazardous Waste in containers on-site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. Part 265. 40 C.F.R. § 265.173(a) provides that a container holding Hazardous Waste “must always be closed during storage, except when it is necessary to add or remove waste.”
- ii. At the time of the Inspection, the EPA inspectors observed a 55-gallon drum of D001 aerosol can waste with an open puncturing device on the lid in the “Rag Collection” area.

c. Failure to Provide RCRA Training

- i. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(4) and, by further reference, the Personnel Training document retention requirements of 40 C.F.R. § 265.16(c), requires facility personnel to take part in an annual review of the initial training required in 40 C.F.R. § 265.16(a).
- ii. At the time of the Inspection, in addition to information provided in Respondent’s IRL responses, the EPA inspectors reviewed records that indicated several employees, detailed in Count 5 below, were not provided with an annual review of the initial training required pursuant to 40 C.F.R. § 265.16(a).

d. Failure to Maintain RCRA Training Documents

- i. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(4) and, by further reference, the Personnel Training document retention requirements of 40 C.F.R. § 265.16(d)(1) and (2).
- ii. 40 C.F.R. § 265.16(d)(2) requires the Facility to maintain documentation on site of a “written job description for each position” listed under 40 C.F.R. § 265.16(d)(1). The description

“may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position.”

- iii. At the time of the Inspection, Respondent did not provide a list of personnel requiring RCRA training along with their job titles. Additionally, Respondent provided four job descriptions to the EPA inspectors at the Inspection, and three of the four job descriptions did not mention RCRA or Hazardous Waste responsibilities or training standards.
- iv. Respondent subsequently provided eight job descriptions in its November 7, 2023 IRL response. However, five of those eight descriptions did not mention RCRA or Hazardous Waste.

e. Failure to Maintain an Adequate Contingency Plan

- i. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(4) and, by further reference, the Contingency Plan requirements of 40 C.F.R. § 265.52 and 40 C.F.R. § 265.53.
- ii. 40 C.F.R. § 265.52(e) requires a Contingency Plan to list all emergency equipment at a facility (such as fire extinguishing systems, spill equipment, alarm systems) where such equipment is required. The list must be kept up to date, and the plan must include the location and physical description of each item on the list, along with a brief outline of its capabilities.
- iii. 40 C.F.R. § 265.53(b) requires a facility to submit a copy of the Contingency Plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
- iv. At the time of Inspection, the EPA inspectors reviewed the Contingency Plan and observed it did not contain a list of emergency equipment. Additionally, the EPA inspectors found no evidence that the plan had been shared with local emergency authorities.

- 31. At the time of the Inspection, Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(c) by operating as a hazardous

storage facility without interim status or a permit to treat, store, and/or dispose of hazardous waste.

32. In failing to comply with 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 2
Failure to Submit 2021 Biennial Report

33. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
34. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), provides that “a generator who ships Hazardous Waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year.” The Biennial Report must cover generator activities during the previous year.
35. Respondent has shipped Hazardous Waste off-site based on manifests the EPA inspectors observed at the Inspection from the previous three years.
36. At the Inspection, the EPA inspectors asked Respondent for the prior two Biennial Reports to review. However, Respondent indicated it had not submitted Biennial Reports.
37. In failing to submit a Biennial Report by March 1, 2022, Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a).
38. In failing to comply with 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 3
Failure to Notify PADEP of Change in Generator Status

39. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

40. 25 Pa. Code § 262a.12(b)(1)(v) requires that a generator notify the PADEP if the generator's facility class changes, except when the change is temporary.
41. At the time of the Inspection, the EPA inspectors requested and examined the Hazardous Waste manifests from the past three years. During that examination, the EPA inspectors determined the manifests indicated the Facility had several months above the Large Quantity Generator ("LQG") threshold (generation of 1,000 kg of Hazardous Waste or greater in a calendar month) in 2020, 2021, and 2022, indicating the Facility was an LQG in all three years. The following manifests indicate the Facility was an LQG:

Manifest Number	Date	Waste Quantity (kg)
001762176VES	May 14, 2020	4,400
001973427VES	November 19, 2020	12,750
002061654VES	August 23, 2021	4,400
002043833VES	December 2, 2021	2,200
002174431VES	April 8, 2022	4,400
002153708VES	June 16, 2022	9,680

42. On December 20, 2022, Respondent submitted a notification to PADEP to revise the Facility's status from Small Quantity Generator ("SQG") to LQG.
43. From June 2020 until December 2022, Respondent violated 25 Pa. Code § 262a.12(b)(1)(v) by failing to notify PADEP of the Facility's change in status.
44. In failing to comply with 25 Pa. Code § 262a.12(b)(1)(v), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 4
Failure to Provide RCRA Training

45. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
46. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), requires facility personnel to "take part in an annual review of the initial training required in" 40 C.F.R. § 264.16(a).

47. At the time of the Inspection, in addition to information provided in Respondent's IRL responses, the EPA inspectors reviewed records that indicated employees were missing the following annual review trainings:

Employee	Training Missed Within 3 Years Prior to the Inspection
Employee 1	2019, 2021, 2022
Employee 2	2020, 2021
Employee 3	2022
Employee 4	2022
Employee 5	2019, 2020, 2021, 2022
Employee 6	2022
Employee 7	2019, 2021, 2022
Employee 8	2019, 2020, 2022
Employee 9	2022
Employee 10	2019, 2021, 2022

48. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), when it failed to provide an annual review of the initial RCRA training to ten employees for multiple years, as detailed above.
49. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 5
Failure to Maintain RCRA Training Documents

50. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
51. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), requires the Facility to maintain documentation on site of the job title for each position at the facility related to Hazardous Waste management and the name of the employee filling each job.
52. 40 C.F.R. § 264.16(d)(2) requires the Facility to maintain documentation on site of a "written job description for each position" listed under 40 C.F.R. § 264.16(d)(1). The description "may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or

bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position.”

53. At the time of the Inspection, Respondent did not provide a list of personnel requiring RCRA training along with their job titles.
54. Additionally, at the time of the Inspection, Respondent provided four job descriptions to the EPA inspectors, and three of the four job descriptions did not mention RCRA or Hazardous Waste responsibilities or training standards.
55. Respondent subsequently provided eight job descriptions in its November 7, 2023 IRL response. However, five of those eight descriptions did not mention RCRA or Hazardous Waste.
56. At the time of the Inspection, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2) by failing to provide and maintain on site job descriptions for each position related to Hazardous Waste Management along with the name of the employee filling each job.
57. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 6

Failure to Maintain an Adequate Contingency Plan

58. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
59. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.52 and 53, sets forth the requirements for Contingency Plans.
60. 40 C.F.R. § 264.52(e) requires a Contingency Plan to list all emergency equipment at a facility (such as fire extinguishing systems, spill equipment, alarm systems) where such equipment is required. The list must be kept up to date, and the plan must include the location and physical description of each item on the list, along with a brief outline of its capabilities.
61. 40 C.F.R. § 264.53(b) requires a facility to submit a copy of the Contingency Plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

- 62. At the time of Inspection, the EPA inspectors reviewed the Facility's Contingency Plan and observed it did not contain the required list of emergency equipment.
- 63. At the time of the Inspection, the EPA inspectors found no evidence that the plan had been shared with local emergency authorities.
- 64. At the time of the Inspection, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.52 and 53, by having an inadequate Contingency Plan that did not list emergency equipment and by failing to share that Contingency Plan with local emergency authorities.
- 65. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.52 and 53, Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 7

Failure to Keep Containers of Hazardous Waste Closed

- 66. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 67. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides that a container holding Hazardous Waste "must always be closed during storage, except when it is necessary to add or remove waste."
- 68. At the time of the Inspection, the EPA inspectors observed a 55-gallon drum of D001 aerosol can waste with an open puncturing device on the lid in the "Rag Collection" area.
- 69. At the time of the Inspection, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep containers holding Hazardous Waste closed during storage, except when it is necessary to add or remove waste.
- 70. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 8

Failure to Properly Label Container of Universal Waste

71. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
72. 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.14(a), requires that universal waste batteries (i.e., each battery), or a container in which the batteries are contained to be labeled or clearly marked with: “Universal Waste—Battery(ies),” “Waste Battery(ies),” or “Used Battery(ies).”
73. At the time of the Inspection, the EPA inspectors observed an open tray of used batteries on a shelf across from the “Tool Room” doorway labeled “Dead batteries.”
74. At the time of the Inspection, Respondent violated 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.14(a), by improperly labeling the universal waste batteries as simply “Dead batteries” instead of “Universal Waste—Battery(ies),” “Waste Battery(ies),” or “Used Battery(ies).”
75. In failing to comply with 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.14(a), Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count 9

Failure to Date or Track Storage Time of Universal Waste Container

76. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
77. 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.15(a), mandates a small quantity handler of universal waste “may accumulate universal waste for no longer than one year from the date the universal waste is generated.”
78. 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.15(c), provides small quantity generators methods to demonstrate the length of time universal waste has been accumulated:
 - a. 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;

- b. Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
 - c. Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
 - d. 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;
 - e. 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
 - f. 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.
79. 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.9, defines a small quantity handler of universal waste as a universal waste handler “who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
80. Respondent is a small quantity handler of universal waste.
81. At the time of the Inspection, the EPA inspectors observed an open tray of used batteries on a shelf across from the “Tool Room” doorway labeled “Dead batteries.”
82. At the time of the Inspection, the tray of batteries the EPA inspectors observed was undated and the batteries themselves were undated.
83. At the time of the Inspection, Respondent violated 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.15, by failing to date or otherwise track storage time of universal waste to ensure the universal waste was stored for no longer than one year.
84. In failing to comply with 25 Pa. Code § 266b.1(a), which incorporates by reference 40 C.F.R. § 273.15, Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

CIVIL PENALTY

85. In settlement of the 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 **Sixty-Four Thousand Six Hundred dollars (\$64,600)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
86. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in RCRA, Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), including, the following: 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 the EPA's 1990 RCRA Civil Penalty Policy, as revised June 2003 and May 6, 2020 ("RCRA Penalty Policy") which reflects the statutory penalty criteria and factors set forth at RCRA, Sections 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
87. Respondent agrees to pay a civil penalty in the amount of \$64,600 ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
88. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
89. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, RCRA-03-2025-0014,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Amy Stevens
Assistant Regional Counsel
Stevens.amy@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

“Proof of Payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

90. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the Internal Revenue Service (“IRS”) large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover the EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

91. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
92. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
93. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
94. 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 the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

95. The Parties consent to service of the Final Order by e-mail at the following valid email addresses: stevens.amy@epa.gov (for Complainant), and ALecker@cozen.com (for Respondent).
96. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the IRS annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, **including** amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:
 - a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to the EPA’s Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Paragraph 103 and
- ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

97. 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.
98. Respondent certifies that any information or representation it has supplied or made to the 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. The EPA shall have the right to institute further actions to recover appropriate relief if the 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 are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the 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

99. Respondent certifies to the 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

100. 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 the 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 RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

101. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the 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). The 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

102. 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 providing the signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that the person signing 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.

EFFECTIVE DATE

103. The effective date of this Consent Agreement and Final Order ("Effective Date") is the date on which the Final Order, signed by the Regional Administrator of the EPA, Region 3, or the Regional Administrator's designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

104. 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: Kingsbury, Inc.

Date: 6 November 2024

By: Michael J. Brawley
Michael J. Brawley
President and CEO

For the Complainant:

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 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or the Regional Administrator's designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Amy Stevens
Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

FILED

Nov 20, 2024

11:58 am

U.S. EPA REGION 3
HEARING CLERK

In the Matter of: :
: :
KINGSBURY, INC. : U.S. EPA Docket No. RCRA-03-2025-0014
10385 DRUMMOND ROAD :
PHILADELPHIA, PENNSYLVANIA 19154 : Proceeding under Sections 3008(a) and (g) of
: the Resource Conservation and Recovery Act,
Respondent. : 42 U.S.C. §§ 6928(a) and (g)
: :
KINGSBURY, INC./MESSINGER BEARINGS :
10385 DRUMMOND ROAD :
PHILADELPHIA, PENNSYLVANIA 19154, :
: :
Facility. :
:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Kingsbury, Inc. 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*, the EPA's 1990 RCRA Civil Penalty Policy, as revised on June 2003 and May 6, 2020 ("RCRA Penalty Policy"), and the statutory factors set forth in Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Sections 3008(a) and (g) of RCRA, 42 U.S.C. Sections 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 **SIXTY-FOUR THOUSAND SIX HUNDRED DOLLARS (\$64,600.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), 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.

By: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
KINGSBURY, INC.	:	
10385 DRUMMOND ROAD	:	U.S. EPA Docket No. RCRA-03-2025-0014
PHILADELPHIA, PENNSYLVANIA 19154	:	
	:	
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	:	the Resource Conservation and Recovery Act,
	:	42 U.S.C. §§ 6928(a) and (g)
KINGSBURY, INC./MESSINGER BEARINGS :	:	
10385 DRUMMOND ROAD	:	
PHILADELPHIA, PENNSYLVANIA 19154	:	
	:	
Facility.	:	

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. 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:

Copies served via email to:

Michael J. Brawley, President and CEO
Kingsbury, Inc.
MJB@kingsbury.com
10385 Drummond Road
Philadelphia, Pennsylvania 19154

Alison Lecker
Cozen O'Connor
ALecker@cozen.com
One Liberty Place
1650 Market Street
Suite 2800
Philadelphia, Pennsylvania 19103

Nathan Runge, EHS Manager
Kingsbury, Inc.
NER@kingsbury.com
10385 Drummond Road
Philadelphia, Pennsylvania 19154

In Re: Kingsbury, Inc.

EPA Docket No. RCRA-03-2025-0014

Amy Stevens
Assistant Regional Counsel
U.S. EPA, Region 3
Stevens.amy@epa.gov

Martin Matlin
Enforcement Officer
U.S. EPA, Region 3
Matlin.Martin@epa.gov

[Digital Signature and Date]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3