

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: A.J. D'Angelo

DEC 9 2010

Name of Contact person

Date

in the Office of Regional Counsel (3RC30)

at (215) 814-2480

Office

Phone number

Non-SF Jud. Order/Consent
Decree. DOJ COLLECTS

Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent
Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Company making payment: Palmer industrial Coatings, Inc.

The Total Dollar Amount of Receivable: Twenty Three Thousand Dollars (\$23,000.00)

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2011-0047

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Office of Land Enforcement (3LC70)

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005

- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 3. Regional Hearing Clerk

- 2. Designated Program Office

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

A.J. D'Angelo (3RC30)
Sr. Asst. Regional Counsel

Direct Dial: (215) 814-2480
Fax: (215) 814-2603

Jennifer Keene
U.S. Environmental Protection Agency
Cincinnati Finance Management Center (CFMC)
26 W. Martin Luther King Drive
Cincinnati, OH 45268

DEC 9 2010

Re: **Palmer Industrial Coatings, Inc.**
Docket No. RCRA-03-2011-0047

Dear Jennifer:

Please find enclosed hard copies of an Administrative Penalty Order (Consent Agreement and Final Order with Certificate of Service) and of the associated EARCNF form in the above-referenced matter.

The Final Order calls for the Respondent to pay a civil penalty of \$23,000.00 no later than thirty (30) calendar days after the date on which the CAFO is mailed or hand-delivered to the Respondent. I would appreciate if your could provide me with proof of payment upon receipt of same.

Sincerely,



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

Enclosures

cc: Ken Cox
Office of Land Enforcement (3LC70)

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

	:	
	:	
Palmer Industrial Coatings, Inc.	:	U.S. EPA Docket No.
191 Palmer Industrial Road	:	RCRA-03-2011-0047
Williamsport, Pennsylvania 17701	:	

RESPONDENT.

	:	
	:	
Palmer Industrial Coatings, Inc.	:	Proceeding Under Section 3008(a)
191 Palmer Industrial Road	:	and (g) of the Resource Conservation
Williamsport, Pennsylvania 17701	:	and Recovery Act, as amended,
RCRA I.D. # PAD052290186	:	42 U.S.C. § 6928(a) and (g)

FACILITY.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Palmer Industrial Coatings, Inc. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO"), collectively referred to herein as the "CAFO", simultaneously commence and conclude this administrative proceeding against Respondent.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by the U.S. Environmental Protection Agency ("EPA" or the "Agency") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on three separate occasions (September 26, 2000, January 20, 2004 and April 29, 2009). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004 and June 29, 2009, respectively. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).
4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization and October 12, 2005 for the April 29, 2009 PaHWR authorization.
5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at its facility located at 191 Palmer Industrial Road, Williamsport, Pennsylvania 17701 (the "Facility").
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated April 9, 2010, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP" or the "Department"), of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

7. Respondent admits the jurisdictional allegations set forth in this CAFO.

8. Respondent neither admits nor denies the factual allegations or legal conclusions contained in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CAFO, except as provided in Paragraph 7, immediately above.
9. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney’s fees.
13. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. Respondent is a Pennsylvania corporation with offices in Williamsport, Pennsylvania.
17. At all times herein relevant, Respondent was engaged in the cleaning and specialized coating of large metal structures, components and fabricated parts at its Facility.
18. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.
19. The Facility is a hazardous waste storage “facility” as that term is defined in 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.

20. Respondent is and, at all times relevant to this CAFO, was the “owner” and “operator” of a facility (i.e., the Facility), where the Respondent engaged in *hazardous waste management* activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
21. Respondent is and, at all times relevant to this CAFO has been, a “generator” of “solid waste” and “hazardous waste” (including hazardous waste having EPA Hazardous Waste Numbers D001, D035, F003 and F005, as specified in 40 C.F.R. §§ 261.21, 261.24 and 261.31, and incorporated by reference in 25 Pa. Code § 261a.1), at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
22. At all times relevant to this CAFO, Respondent has been a “small quantity generator”, as that term is defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, who has generated greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and has had to transport such hazardous waste over a distance of 200 or more miles for off-site treatment, storage or disposal.
23. At all times relevant to this CAFO, and as described below, Respondent has engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” at the Facility, as the former term is defined in 25 PA Code Section 260a.10 and as the latter terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
24. On November 4, 2009, a duly authorized representative of EPA conducted a compliance evaluation inspection (the “CEI”) at the Facility to assess the Respondent’s compliance with federally authorized PaHWR requirements.
25. On February 10, 2010, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to the Facility seeking additional information regarding Respondent’s hazardous waste generation and management practices at the Facility and requesting the production of specified documents and information.
26. Respondent replied to EPA’s IRL by correspondence dated March 5, 2010.
27. On May 26, 2010, EPA sent a Notice of Noncompliance and Request to Show Cause letter (“NON”) to the Respondent advising Respondent of EPA’s preliminary findings of PaHWR 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 PaHWR compliance at the Facility.

28. In response to the NON, Respondent provided EPA with supplemental information, including financial information pertinent to the Respondent's ability to pay a civil penalty.
29. On the basis of the CEI and a review of the supplemental information provided to EPA by Respondent, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

COUNT I
(Operating Without a Permit)

30. The allegations of Paragraphs 1 through 29 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.

Applicable Statutory Requirements & Factual Findings

31. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
32. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

**Applicable Regulatory Permit Exemption Conditions -
Accumulation Time & General Requirements**

33. 25 PA Code Section 262a.10 incorporates by reference the requirements of 40 C.F.R. § 262.34(e), which provides that a generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site (in containers, tanks, drip pads, or containment buildings) for 270 days or less without a permit or without having interim status for such accumulation, *so long as the hazardous waste is stored in compliance with the requirements of 40 C.F.R. § 262.34(d).*

34. 40 C.F.R. § 262.34(d) provides, in relevant part and with exceptions not herein applicable, that: “. . . (2) The generator [shall] compl[y] with the requirements of subpart I of [40 C.F.R.] part 265 . . .”; [and] . . . (4) The generator [shall] compl[y] with the requirements of paragraphs (a)(2) and (a)(3) of this [40 C.F.R.] section [262.34]. . . .”

**Applicable Regulatory Permit Exemption Conditions -
Management and Inspection of Containers**

35. 40 C.F.R. Part 265, Subpart I, pertaining to the “Use and Management of Containers” includes, among other things, the requirements of 40 C.F.R. § 265.173(a), which provides that: “(a) A container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”

36. 40 C.F.R. § 262.34(a)(2) and (3) further require that: “(2) The date upon which each period of accumulation begins [shall be] clearly marked and visible for inspection on each container; and] (3) While being accumulated on-site each container and tank [shall be] labeled or marked clearly with the words “Hazardous Waste”. . . .”

Factual Findings - Permit Exemption Conditions

37. Respondent stored five (5) containers of hazardous waste paint and related material, identified by hazardous waste codes D001/D035/F003/F005, on-site at the Facility for periods of 346 days (December 29, 2008 through December 10, 2009), 318 days (January 26, 2009 through December 10, 2009), 298 days (February 15, 2009 through December 10, 2009), 275 days (March 10, 2009 through December 10, 2009) and 275 days (March 10, 2009 through December 10, 2009), respectively.

38. At the time of the November 4, 2009 CEI, several small (approximately 5-gallon) containers of D001, D035, F003 and/or F005 hazardous paint and solvent waste that were being stored in the Fireproofing Area of the Facility were open at a time when it was not necessary to add or remove waste.

39. At the time of the November 4, 2009 CEI, containers of D001, D035, F003 and/or F005 hazardous paint and solvent waste being accumulated in the Fireproofing Area of the Facility, as described in the preceding paragraph, were not marked with the date upon which the period of accumulation had begun.

40. At the time of the November 4, 2009 CEI, containers of D001, D035, F003 and/or F005 hazardous paint and solvent waste being accumulated in the Fireproofing Area of the Facility, as described in the two preceding paragraphs, were not labeled or marked with the words “Hazardous Waste.”

Legal Conclusion - Failure to Comply with Permit Exemption Conditions

41. For each of the reasons and during each of the times set forth in Paragraphs 37 through 40, above, Respondent failed to qualify for the "less than 270-day" small quantity generator/200 mile transport accumulation exemption of 25 PA Code Section 262a.10 by failing to satisfy and comply with the conditions set forth in 40 C.F.R. § 262.34(d)(2) and (4). The Facility therefore is a hazardous waste treatment, storage or disposal "facility", as that term is defined by 25 PA Code Section 262a.10, that was required to obtain and have a permit or interim status for its described storage activities.

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

42. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II

(Failure to Comply with Hazardous Waste Container Management Requirements)

43. The allegations of paragraphs 1 through 42 of this CA are incorporated herein by reference as though fully set forth at length.
44. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable, that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."
45. On November 4, 2009, containers of D001, D035, F003 and/or F005 hazardous waste stored in the Fireproofing Area of the Facility, as identified in Paragraphs 38 through 40, above, were open at times when it was not necessary to add or remove waste.
46. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by storing hazardous waste in containers that were not kept closed during storage at times when it was not necessary to add or remove waste.

COUNT III

(Failure to Properly Manifest Off-Site Shipments of Hazardous Waste)

47. The allegations of paragraphs 1 through 46 of this CA are incorporated herein by reference as though fully set forth at length.
48. 25 Pa. Code § 262a.10 incorporates by reference, in part, 40 C.F.R. Part 262, including the Appendix thereto (entitled “Appendix to Part 262 — Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions)”), which requires, in relevant part, that “generators . . . of hazardous waste . . . complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.”
49. 25 Pa. Code § 262a.20(a)(1) further provides that generators of hazardous waste must complete the manifest form (8700-22) in its entirety and distribute copies of such manifest in accordance with its instructions.
50. The 40 C.F.R. Part 262 Appendix instructions pertaining to the proper completion of Item 13 – Waste Codes – of the Uniform Hazardous Waste Manifest (EPA Form 8700-22) instructs the generator of hazardous waste to: “Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.”
51. On December 19, 2008, March 10, 2009 and April 23, 2009, respectively, Respondent made off-site shipments of D001/D035/F003/F005 hazardous still bottom/paint waste from the Facility, but only entered the single federal waste code “D001” in Item 13 of each accompanying Uniform Hazardous Waste Manifest (EPA Form 8700-22) in its description of the waste stream identified in Item 9b of each Manifest.
52. Respondent failed to comply fully with the 40 C.F.R. Part 262 Appendix Instructions, and violated 25 Pa. Code § 262a.10 and 262a.20(a)(1) requirements, by failing to enter each of the federal waste codes which are most representative of the properties of the Facility’s still bottom/paint waste stream in Item 13 (Waste Codes) of the Manifests that accompanied the off-site shipments of such hazardous waste stream from the Facility on December 19, 2008, March 10, 2009 and April 23, 2009.

COUNT IV

(Failure to Comply with Land Disposal Restriction Generator Notice Requirements)

53. The allegations of paragraphs 1 through 52 of this CA are incorporated herein by reference as though fully set forth at length.
54. 25 Pa. Code § 268a.1 incorporates by reference the requirements of 40 C.F.R. § 268.7(a)(2), which pertains to generator land disposal restriction (“LDR”) notification requirements and provides, in relevant part, that:
- If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state “This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.”) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.
55. The Generator Paperwork Requirements Table of 40 C.F.R. § 268.7(a)(4), in column “268.7(a)(2)”, row 3, further provides, in relevant part and with an exception not herein applicable, that a hazardous waste generator must include as “required information” in the one-time written LDR notice that accompanies its initial shipment of waste to each treatment or storage facility receiving the waste, information that “[t]he waste is subject to the LDRs” and information identifying “[t]he constituents of concern for F001–F005, and F039, and underlying hazardous constituents in characteristic wastes”
56. Respondent sent an initial shipment of D001/D035/F003/F005 hazardous waste generated at the Facility for treatment to the Safety-Kleen Systems, Inc., 3700 Lagrange Road, Smithfield Kentucky, facility (the “Treatment Facility”) on December 19, 2008 and sent subsequent shipments of D001/D035/F003/F005 hazardous waste generated at the Facility to this same Treatment Facility on March 10, 2009 and April 23, 2009.
57. Each of these 3 hazardous waste shipments identified in the preceding paragraph included LDR hazardous wastes and were accompanied by LDR notices that identified the LDR

hazardous waste as D001 ignitable characteristic waste, but which failed to identify or include the required constituents of concern for the F003 and F005 wastes and the underlying hazardous constituent(s) for the characteristic D035 waste.

58. Respondent violated 25 Pa. Code § 268a.1 by failing to include all of the “required information” identified in column “268.7(a)(2)” of the Generator Paperwork Requirements Table of 40 C.F.R. § 268.7(a)(4) in a one-time written LDR notice to the Treatment Facility referenced in paragraph 56, above, with its initial shipment of D001/D035/F003/F005 hazardous waste to that Treatment Facility.

IV. CIVIL PENALTY

59. Respondent agrees to pay a civil penalty in the amount of **Twenty Three Thousand Dollars (\$23,000.00)** in settlement and satisfaction of all civil claims which Complainant may have against Respondent under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged against Respondent in the Modified Complaint.

60. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant’s consideration of a number of factors, including the penalty criteria set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent’s ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent, as follows:

- a. Federal Income Tax Returns for 2007, 2008 and 2009;
- b. Unaudited Financial Statements for 2007, 2008 and 2009;
- c. Internally prepared Profit and Loss Statement for the 6 month period ended June 20, 2010 and Balance Sheet as of June 30, 2010;

- d. Fixed Asset Depreciation Schedule;
- e. Accounts Receivable and Accounts Payable listings as of August 2 and August 3, 2010, respectively;
- f. The "Financial Statement of Corporate Debtor" for Palmer Industrial Coatings, Inc., signed by Dina Wascher, Chief Executive Officer, Palmer Industrial Coatings, Inc.;
- g. An appraisal for the Facility and associated real property, dated September 5, 2007;
- h. An Agreement of Sale for the Facility and associated real property, dated May 4, 2010, which was terminated prior to sale according to representations of Respondent's Chief Executive Officer;
- i. Real estate tax bills for the property, dated March 1, 2010; and
- j. Attorney bills, copies of liens for unpaid taxes, leases and other sundry items.

61. In reliance upon the financial information identified in Paragraph 60, immediately above, and based upon an analysis of the same and in consideration of the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and EPA's RCRA Penalty Policy, which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), Complainant has concluded that Respondent has established that it is unable to pay a civil penalty in excess of the amount of Twenty Three Thousand Dollars (\$ 23,000.00) in settlement of the above-captioned action.

62. By the signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals 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. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.

63. Payment of the civil penalty as required by paragraph 59, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address (*Palmer Industrial Coatings, Inc., 191 Palmer Industrial Road, Williamsport, Pennsylvania 17701*) and the Docket Number of this action (*Docket No. RCRA-03-2011-0047*).
- b. All checks shall be made payable to "United States Treasury".
- c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

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

Contact: Craig Steffen - (513-487-2091)
Eric Volck - (513-487-2105)

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

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

Contact: (314)418-1028

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency")

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

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact : John Schmid - (202) 874-7026, or REX, 1-866-234-5681

- g. Additional payment guidance is available at:

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

- h. On-Line Payment Option:

WWW.PAY.GOV

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

64. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

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

and

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

65. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
66. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
67. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
68. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
69. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

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

VI. OTHER APPLICABLE LAWS

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

VII. RESERVATION OF RIGHTS

72. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

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

IX. PARTIES BOUND

74. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

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

XI. ENTIRE AGREEMENT

76. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent Palmer Industrial Coatings, Inc.:

Date:

11/29/10

By:

Dina M. Wascher

Dina M. Wascher
Chief Executive Officer
Palmer Industrial Coatings, Inc.

In the Matter of: Palmer Industrial Coatings, Inc.
RCRA I.D. #PAD052290186

Consent Agreement
Docket No. RCRA-03-2011-0047

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 12/2/2010

By:



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

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

Date: 12/7/10

By:



Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Palmer Industrial Coatings, Inc.
191 Palmer Industrial Road
Williamsport, Pennsylvania 17701**

**U.S. EPA Docket No.
RCRA-03-2011-0047**

RESPONDENT.

**Palmer Industrial Coatings, Inc.
191 Palmer Industrial Road
Williamsport, Pennsylvania 17701
RCRA I.D. # PAD052290186**

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

FACILITY.

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Palmer Industrial Coatings, 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.

NOW, THEREFORE, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended, *inter alia*, by 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*, after having

determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of Twenty Three Thousand Dollars (\$23,000.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C.

§ 6928(a), IT IS HEREBY ORDERED that Respondent pay a civil monetary penalty of Twenty Three Thousand Dollars (\$23,000.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

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.

12/9/10

Date

Renée Sarajian

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Palmer Industrial Coatings, Inc. :
191 Palmer Industrial Road : **U.S. EPA Docket No.**
Williamsport, Pennsylvania 17701 : **RCRA-03-2011-0047**

RESPONDENT.

Palmer Industrial Coatings, Inc. : **Proceeding Under Section 3008(a)**
191 Palmer Industrial Road : **and (g) of the Resource Conservation**
Williamsport, Pennsylvania 17701 : **and Recovery Act, as amended,**
RCRA I.D. # PAD052290186 : **42 U.S.C. § 6928(a) and (g)**

FACILITY.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7008 0500 0001 7072 5242), to the following person at the following address:

Paul J. Bruder, Jr., Esquire
Rhoads & Sinon, LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146

DEC 9 2010

Date


A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480