\*\* FILED \*\* 085EP2015 - 09:45M U.S.EPA - Region 09

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX

)	U.S. EPA Docket No.
)	RCRA- 9-2015- 0008
)	
)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
	) ) ) ) )

# CONSENT AGREEMENT

# A. <u>PRELIMINARY STATEMENT</u>

- This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Lynx Enterprises, Inc. (Respondent or "Lynx").
- Respondent owns and operates a facility located at 724 East Grant Line Road, in Tracy, California, 95305 (the "Facility"). The Facility's EPA Identification Number is CAR000246959. Respondent operates a fabrication shop. Product or parts are fabricated from mild steel, stainless steels, aluminium, wood and plastics.
- 3. On February 24, 2013, inspectors from the EPA conducted an unannounced RCRA Compliance Evaluation Inspection ("CEI") at the Facility. The purpose of the inspection was to determine the Facility's compliance with applicable federal environmental statutes and regulations, and in particular RCRA, as amended, and the regulations in 40 C.F.R. Parts 261-265, 268, 273 and 279, and the regulations adopted by the California authorized program under RCRA in the California Code of Regulations ("C.C.R."), Title 22, Division 4.5 and the California Health and Safety Code, Division 20.<sup>1</sup> Based upon

<sup>&</sup>lt;sup>1</sup> All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California

the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.

4. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) determine if wastes generated by the facility are hazardous, a violation of 22 C.C.R. § 66262.11 [see also 40 C.F.R. 262.11]; (2) obtain an EPA Identification Number, a violation of 22 C.C.R. § 66262.12(a) [see also 40 C.F.R. § 262.12(a)]; (3) close containers of hazardous waste, a violation of 22 C.C.R. § 22 C.C.R. § 66265.173 [see also 40 C.F.R. § 265.173]; (4) obtain a permit for storage of hazardous waste (storage over 90 days and failure to properly mark and label hazardous waste accumulation containers), a violation of 22 C.C.R. § 66270.1 [see also 40 C.F.R. § 270.1]; (5) maintain adequate aisle space for hazardous waste accumulation containers, a violation of 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 265.35]; (6) implement a complete personnel training program, a violation of 22 C.C.R. § 66265.16 [see also 40 C.F.R. § 265.16]; and (7) complete an adequate hazardous waste management contingency plan, a violation of 22 C.C.R. § 66265.52 [see also 40 C.F.R. § 265.52]. These are all in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq., and state regulations adopted pursuant thereto.

#### B. JURISDICTION

- 5. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
- 6. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. Corresponding Federal citations are provided in brackets.

- 7. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
- 8. Respondent is a large quantity "generator" of hazardous waste, generating greater than 1,000 kilograms of hazardous waste in one month. See 22 C.C.R. §§ 66260.10, 66262.34 [*see also* 40 C.F.R. §§ 260.10, 262.34].
- 9. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. §260.10].
- 10. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [see also 40 C.F.R. § 261.2].
- 11. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [see also RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to: spent corrosive liquids (D002); waste flammable liquids (D001, F003); and distillation solids (F003).
- 12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
- 13. A violation of California's authorized hazardous waste program, found at H&SC § 25100 et seq., constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
- 14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
- 15. The Administrator delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who redelegated this authority to the signatory below.

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#### C. ALLEGED VIOLATIONS

# COUNT I

# Failure to make a hazardous waste determination

- 16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 17. 22 C.C.R. § 66262.11 states that a facility which generates waste, as defined by 22
  C.C.R. § 66261.2 must determine if the waste is a hazardous waste [see also 40 C.F.R. § 262.11 and 40 C.F.R. § 262.11].
- 18. At the time of the EPA inspection, the EPA Inspectors observed several waste streams that were not being managed as hazardous waste, including: contaminated wipes in the general trash; six 1-gallon containers of unidentified waste in the maintenance area; and several pallets of unknown wastes in 1- and 5-gallon containers in and near the hazardous waste storage area.
- 19. After the inspection, all of the wastes described in Paragraph 18 were determined to be hazardous.
- 20. Respondent failed to determine if the solid wastes it generated was hazardous waste.
- 21. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66262.11 [see also 40 C.F.R. § 262.11].

#### COUNT II

#### Failure to obtain an EPA Identification number

- 22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 23. 22 C.C.R. § 66262.12(a) provides that a generator shall not treat, store, dispose of, transport or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator [*see also* 40 C.F.R. § 262.12(a)].
- 24. The state of California has added certain wastes to its definition of hazardous, such that California's list includes all federal hazardous waste, plus additional wastes that are not classified as hazardous under the federal program.

- 25. At the time of the inspection the facility had obtained an identification number from the California Department of Toxic Substances Control (DTSC) for non-RCRA, Californiaonly hazardous waste (CAL 000214039), but had failed to obtain the necessary EPA ID Number for RCRA regulated hazardous waste.
- 26. In order to transport RCRA hazardous waste, Respondent needed a federal EPA identification number, but failed to obtain one.
- 27. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66262.12(a) [*see also* 40 C.F.R. § 262.12].

# <u>Count III</u> Failure to close containers of hazardous waste

- 28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 29. 22 C.C.R. § 66262.34(a) requires that generators may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 262.34 and 40 C.F.R. §265.173].
- 30. 22 C.C.R. § 66265.173(a) provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173(a)].
- 31. At the time of the inspection, the EPA Inspectors observed several containers that were open when waste was not being added or removed, including: one 5-gallon container of acetone solvent waste without a lid; two 5-gallon containers with lids that were not secured; and four 55-gallon containers of hazardous waste with lids that were not secured.
- 32. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66265.173(a) [see also 40 C.F.R. § 265.173(a).

#### COUNT IV

# Failure to provide adequate aisle space

- 33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 34. 22 C.C.R. § 66262.34(a) requires that generators may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 262.34 and 40 C.F.R. § 265.35].
- 35. 22 C.C.R. § 66265.35 requires that 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, unless the aisle space is not needed for any of these purposes [see also 40 C.F.R. § 265.35].
- 36. At the time of the inspection, the EPA Inspectors observed that the Hazardous Waste Storage Area did not provide adequate aisle space in an area where aisle space was needed.
- 37. Therefore, EPA alleges that Respondent stored hazardous waste without adequate aisle space, a violation of 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 265.35].

#### COUNT V

Failure to meet hazardous waste training requirements

- 38. Paragraphs 1 through 37 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 39. 22 C.C.R. § 66262.34(a) requires that generators may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.16(a) [see also 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.16(a)].
- 40. 22 C.C.R. § 66262.16(a) requires that large quantity generators must ensure all facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the RCRA hazardous waste management requirements.
- 41. 22 C.C.R. § 66265.16(c) states that facility personnel must take part in an annual review

of the initial training required above [see also 40 C.F.R. § 265.16].

- 42. Information obtained by EPA showed that Respondent had one individual managing hazardous waste who had not received annual hazardous waste training.
- 43. In addition Respondent could not provide documentation of training.
- 44. Therefore EPA alleges that Respondent failed to meet hazardous waste training requirements, a violation of 22 C.C.R. § 66262.16 [see also 40 C.F.R. § 265.16].

# <u>COUNT VI</u>

# Failure to maintain contingency plan

- 45. Paragraphs 1 through 44 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 46. 22 C.C.R. § 66262.34(a) provides that generators who accumulate hazardous waste on site without a permit or grant of interim status shall comply with 22 C.C.R. § 66265.52 [*see also* 40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.52].
- 47. 22 C.C.R. § 66265.52 requires that the facility's contingency plan describe the actions facility personnel shall take to comply with 22 CCR § 66265.51 and 22 CCR 66265.56 in response to fires, explosives, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
- 48. At the time of the inspection, the EPA Inspectors found that the contingency plan was missing all of the information required by 22 C.C.R. § 66265.52, except for information about the environmental coordinator.
- 49. Therefore EPA alleges that Respondent failed to meet certain contingency plan requirements, a violation of 22 CCR § 66265.52.

#### COUNT VII

Failure to obtain a permit for storage of hazardous waste

- 50. Paragraphs 1 through 49 above are incorporated herein by this reference as if they were set forth here in their entirety.
- 51. 22 C.C.R. § 66262.34(a) and (f) allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status, provided that the generator complies with certain requirements.

- 52. In addition to the requirements in Counts III VI above, generators who accumulate hazardous waste must label each hazardous waste tank or container with the words "hazardous waste" and the date accumulation of the waste begins. The label must be visible for inspection [*see also* 40 C.F.R. § 262.34(a)]. 22 C.C.R. § 66262.34(f) also requires that the label show the composition and physical state of the wastes; a statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.); and the name and address of the person producing the waste.
- 53. At the time of the CEI, the EPA Inspectors observed several containers of RCRA hazardous waste that were not marked with the words "hazardous waste" and did not include the required accumulation start date.
- 54. Therefore EPA alleges that Respondent failed to label containers appropriately.
- 55. The EPA Inspectors also observed several containers of hazardous waste older than 90 days.
- 56. 22 C.C.R. § 66262.34(c) states that a generator who accumulates hazardous waste for more than 90 days is subject to the permit requirements at 22 C.C.R. § 66270.1 *et seq.*
- 57. Therefore EPA alleges that Respondent stored waste without a permit, in violation of 22 C.C.R. § 66 270.1 [see also 40 C.F.R. § 270.1].
- D. <u>CIVIL PENALTY</u>
- 58. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy ("Penalty Policy"), including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$28,750.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

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#### E. <u>SUPPLEMENTAL ENVIRONMENTAL PROJECT</u>

- 59. As part of the settlement of this enforcement action, Respondent shall perform an environmental compliance promotion SEP. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree is intended to provide significant environmental or public health protection and improvements.
- 60. Within sixty (60) days of the effective date of this CA/FO Respondent shall finalize a contract with a qualified independent third party to (a) develop a training video summarizing federal, state, and local hazardous waste regulatory requirements; and (b) perform on-site source reduction meetings at twenty-nine metal finishing facilities in the San Joaquin County and South San Francisco Bay areas.
- 61. For the training video, the contractor shall develop a video designed to help employees who manage hazardous waste identify, achieve and maintain compliance with applicable statutory and regulatory requirements.
- 62. The contractor shall present the video at two seminars, and invite at least twenty-four metal finishing companies to attend at no cost to the attendees. Respondent shall document the attendees at each seminar.
- 63. The contractor shall make the video available to the California Department of Toxic Substances Control and Certified Unified Program Agencies for their use and distribution, and provide an internet link to a version of the video that can be reached by the general public, for example a link to the video on a public website such as Youtube®.
- 64. Respondent must complete the SEP tasks at paragraphs 61, 62, and 63 within 12 months of the effective date of this CA/FO.
- 65. For the source reduction evaluations, the contractor shall perform on-site meetings at twenty-nine companies in the metal finishing sector located in the San Joaquin County and South San Francisco Bay areas. The on-site meetings will result in review of all waste streams generated; an evaluation of potential source reduction measures; and description of waste minimization measures that could be implemented.
- 66. At the end of each on-site meeting, Respondent will provide each company with a form requesting feedback about the value of the source reduction evaluation.

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- 67. Within six (6) months of each source reduction evaluation, Respondent will contact each company evaluated and request information regarding any waste minimization steps implemented at the facilities as a result of the on-site source reduction meetings.
- 68. Respondent must complete the source reduction meeting portion of the SEP within two years of the effective date of this CA/FO.
- 69. Respondent shall expend at least ONE HUNDRED AND EIGHT THOUSAND DOLLARS (\$108,000) to complete the SEP described herein.
- 70. Within thirty (30) months of the Effective Date of the CA/FO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts; (ii) a list of attendees to the video presentation; (iii) a list of facilities visited for the on-site source reduction meetings; (iv) to the extent available, a summary of any waste minimization steps implemented at the facilities as a result of the on-site source reduction meetings; (v) description of any problems encountered and the solutions thereto; and (vi) certification, as described in Paragraph 72, that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.
- 71. Failure to submit the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Section I below.
- 72. Respondent shall maintain legible copies of documentation of the underlying data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for at least three years, and Respondent shall provide the documentation of any such underlying research and data to EPA within fourteen days of EPA's request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

- 73. In the event that Respondent publicizes implementation of the SEPs described herein, Respondent shall state in a prominent manner that the project is part of a settlement of an enforcement action by EPA.
- 74. In signing this CA/FO, Respondent hereby certifies that it is not required by any federal, state or local law or regulation to perform or develop the SEP described above; nor is Respondent required by agreement, grant or as injunctive relief in this or any other case (other than in this CA/FO) to perform or develop this SEP. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

# F. ADMISSIONS AND WAIVERS OF RIGHTS

- 75. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
- 76. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

# G. <u>PARTIES BOUND</u>

- 77. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and H has been paid in accordance with Section H; the Supplemental Environmental Project is completed in accordance with Section E; and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
- 78. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

79. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

# H. <u>PAYMENT OF CIVIL PENALTY</u>

- 80. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$28,750.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
- 81. Respondent shall submit payment of the TWENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$28,750.00) within thirty (30) calendar days of the Effective Date of this CA/FO in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

#### Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows: US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000.

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information: 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"

<u>Overnight Mail:</u> U.S. Bank 1005 Convention Plaza Mail Station SL-MO-C2GL ATTN Box 979077 St. Louis, MO 63101

<u>ACH (also known as REX or remittance express):</u> Automated Clearinghouse (ACH) for receiving US currency PNC Bank 808 17<sup>th</sup> Street, NW Washington, DC 20074 ABA = 051036706 Transaction Code 22 – checking Environmental Protection Agency Account 31006 CTX Format

On Line Payment: This payment option can be accessed from the information below: <u>www.pay.gov</u> Enter "sfo1.1" in the search field Open form and complete required fields

# If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

82. At the time payment is made, a copy of the payment transmittal shall be sent to:

Regional Hearing Clerk (RC-1) U.S. Environmental Protection Agency - Region 9 75 Hawthorne Street San Francisco, CA 94105

and

John Schofield (ENF 2-2) Enforcement Division Waste and Chemical Section U.S. Environmental Protection Agency - Region 9 75 Hawthorne Street San Francisco, CA 94105.

83. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid

additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

#### I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

- 84. In the event Respondent fails to submit payment within thirty (30) days of the Effective Date, or Respondent fails to meet the deadlines for SEP submittals set out in Section E above, Respondent shall pay stipulated penalties as set forth below:
  For failure to submit a payment to EPA by the time required in this CA/FO, or to meet the deadlines for SEP submittals set out in Section E, up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and TWO THOUSAND DOLLARS (\$2,000) per day for each day of delay thereafter.
- 85. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of EIGHTY SIX THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$86,250).
- 86. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Director, Enforcement Division, EPA Region IX.
- 87. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
- 88. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 81.
- 89. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
- 90. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, reduce or waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

91. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

# J. <u>CERTIFICATIONS</u>

- 92. Certification of Compliance. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste management program including 22 C.C.R. § 66262.11 [see also 40 C.F.R. 262.11]; 22 C.C.R. § 66262.12(a) [see also 40 C.F.R. § 262.12(a); 22 C.C.R. § 66265.16 [see also 40 C.F.R. § 265.16]; 22 C.C.R. § 66262.34(a) [see also 40 C.F.R. § 262.34(a)]; 22 C.C.R. § 66265.31 [see also 40 C.F.R. § 265.31]; 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 265.35]; 22 C.C.R. § 66265.52 [see also 40 C.F.R. § 265.52]; and 22 C.C.R. § 66265.173 [see also 40 C.F.R. § 265.173]; that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
- 93. Certification regarding federal financial assistance transactions. Respondent certifies that: (1) It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Section E above; and (2) it has inquired of the SEP implementer whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the implementer that it is not a party to such a transaction.

#### K. RESERVATION OF RIGHTS

94. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the

violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.

- 95. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
- 96. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

#### L. <u>OTHER CLAIMS</u>

97. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, 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 the Facility.

#### M. MISCELLANEOUS

- 98. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 99. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

100. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

8

Date

Date

Vance Anderson, President Lynx Enterprises, Inc.

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Douglas K McDaniel, Chief Waste and Chemical Section Enforcement Division U.S. Environmental Protection Agency, Region 9

# FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2015-0002) be entered and that Lynx Enterprises, Inc. pay a civil penalty of twenty-eight thousand and seven hundred and fifty dollars (\$28,750.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order, and perform the Supplemental Environmental Project described in Section E. Payment must be made pursuant to Section H of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09

Date

Steven Jawgiel

Regional Judicial Officer United States Environmental Protection Agency, Region 9

# **CERTIFICATE OF SERVICE**

Docket No. RCRA-9-2015- 0008

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, with the Docket numbers referenced above, was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent by certified Mail, Return Receipt Requested to:

Mr. Vance Anderson, President Lynx Enterprises, Inc. 724 East Grant Line Road Tracy, CA 95304

CERTIFIED MAIL NUMBER: 7012 2210 0000 1205 6609

I hereby certify that an additional copy was hand-delivered to the following U.S EPA case attorney:

Rebecca Sugerman Office of Regional Counsel U.S. EPA Region IX 75 Hawthorne Street San Francisco, CA 94105

9/8/15

Date

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FOR :

Steven Armsey Regional Hearing Clerk Office of Regional Counsel, Region IX