

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

In Re:)	
)	
Sartomer Company, Inc.	)	Docket No. RCRA-03-2008-0411
)	
RESPONDENT.	)	Proceeding Under Section
	)	3008(a) and (g) of the
Sartomer Company, Inc.	)	Resource Conservation and
610 South Bolmar Street	)	Recovery Act, as amended,
West Chester, Pennsylvania 19382	)	42 U.S.C. § 6928(a) and (g)
EPA Facility I.D. # PAD042259374)	
)	
FACILITY.)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division (formerly the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("Complainant"), and Sartomer Company, Inc. ("Sartomer" or "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 Sartomer.
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") 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 two separate occasions (September 26, 2000 and January 20, 2004). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000 and March 22, 2004, respectively. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a (July 1999 edition), 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 for the November 27, 2000 PaHWR authorization, and in effect as of June 28, 2001 for the March 22, 2004 PaHWR authorization. The 2004 authorized PaHWR do not make any changes to the November 27, 2000 PaHWR that are relevant to the violations alleged herein. For convenience, all CA citations to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260 - 273 are to the July 1, 2007 edition of the Code of Federal Regulations.
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 610 South Bolmar Street, West Chester, Pennsylvania 19382.
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated November 2, 2007, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP"), 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 specific factual allegations contained in 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 Consent Agreement, the issuance of the attached Final Order, 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 Consent Agreement and any right to appeal the accompanying Final Order.
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 Delaware corporation headquartered in Exton, Pennsylvania.
17. Respondent is engaged in the manufacture of industrial organic chemicals, plastics materials, synthetic resins and other chemicals at its facility located at 610 South Bolmar Street, West Chester, Pennsylvania 19382 (hereinafter, the "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 identified in Paragraph 17 above, and further described below, 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. At all times relevant to this CAFO, Respondent was and is the “owner” and “operator” of the Facility, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
21. As described below, Respondent is and, at all times relevant to this CAFO has been, a “generator” of “solid waste” and “hazardous waste” 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, and as described below, Respondent has engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]”, “tank[s]” and “tank system[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.
23. On or about February 24, 2006, Respondent submitted to EPA a Notification of Hazardous Waste Activity (“Notification”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility and in which Respondent identified itself as a large quantity generator hazardous waste.
24. On May 15, 2007, a duly authorized representative of EPA conducted a compliance evaluation inspection (the “Inspection”) at the Facility to assess the Respondent’s compliance with federally authorized PaHWR requirements.
25. On September 27, 2007, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to Respondent 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 November 2, 2007.
27. On January 28, 2008 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 by correspondence dated April 10, 2008 which EPA reviewed and addressed via correspondence dated April 29, 2008. Respondent thereafter provided EPA with additional information via correspondence dated May 20, 2008.

29. On the basis of the Facility Inspection and a review of the supplemental information provided to EPA by Respondent in response to the NON, 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.

Applicable Definitions

31. Pursuant to 40 C.F.R. § 260.10., as incorporated by reference in 25 Pa. Code § 260a.1.:
- a. the term *container* “means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.”
 - b. the term *generator* “means any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.”
 - c. the term *hazardous waste* means a hazardous waste as defined in [40 C.F.R.] § 261.3. . . .”
 - d. a *hazardous waste management unit* “is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area[]” and “[e]xamples of hazardous waste management units include . . . a tank and its associated piping and underlying containment system and a container storage area . . . [which] includes containers and the land or pad upon which they are placed.”
 - e. the term *operator* “means the person responsible for the overall operation of a facility.”
 - f. the term *owner* “means the person who owns a facility or part of a facility.”
 - g. the term *storage* “means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.”
 - h. the term *tank* “means a stationary device, designed to contain an accumulation of

hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.”

- i. the term *tank system* “means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.”
 - j. the term *universal waste* includes “any of the following hazardous wastes that are managed under the universal waste requirements of [40 C.F.R.] part 273 . . . : (1) Batteries as described in [40 C.F.R.] § 273.2 . . . ; * * * (4) Lamps as described in [40 C.F.R.] § 273.5”
 - k. the term *universal waste handler* includes “(1) . . . (i) A generator (as defined in [40 C.F.R. § 260.10]) of universal waste”
32. Pursuant to 25 Pa. Code § 260a.10.:
- a. the term *facility* is defined to mean “[t]he land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed.”
 - b. the term *management or hazardous waste management* is defined to mean “[t]he entire process, or part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process. The term “hazardous waste management” refers to management of hazardous waste.” and
 - c. the Federal definition for “*new tank system or new tank component*” in 40 C.F.R. § 260.10 — which is “a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of § 264.193(g)(2) and § 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. . . .” — “is incorporated by reference, except that the date referenced is **January 16, 1993**, instead of July 14, 1986.” [Emphasis supplied].

Applicable Statutory Permit Requirements & Factual Findings

33. 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.

34. 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.

Regulatory Permit Exemption Conditions - Accumulation Time

35. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10., generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
- a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts I, AA, BB and CC;
 - b. the condition set forth at 40 C.F.R. § 262.34(a)(1)(ii), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in tanks, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts J, AA, BB and CC;
 - c. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container;
 - d. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste"; and
 - e. in addition, 40 C.F.R. § 262.34(c)(1) provides, in pertinent part and with exceptions not herein applicable, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(a), provided he: (i)

complies with §§ 265.171, 265.172, and 265.173(a) of 40 C.F.R. Part 265, Subpart I; and (ii) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

Permit Exemption Conditions - Management of Containers

36. Subpart I of 40 C.F.R. Part 265 includes the provisions of 40 C.F.R. § 265.173(a), which require that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

Permit Exemption Conditions - Tank Systems

37. Subpart J of 40 C.F.R. Part 265 includes each of the following provisions and requirements pertaining to the "[d]esign and installation of new tank systems or components" and the performance of tank system "[i]nspections":
- a. Pursuant to 40 C.F.R. § 265.192(a), "[o]wners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with [40 C.F.R.] § 270.11(d) . . . , attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information: (1) Design standard(s) according to which the tank(s) and ancillary equipment is or will be constructed. (2) Hazardous characteristics of the waste to be handled. * * * (5) Design considerations to ensure that: (i) Tank foundations will maintain the load of a full tank; * * * (iii) Tank systems will withstand the effects of frost heave."
 - b. Pursuant to 40 C.F.R. § 265.195(a), "[t]he owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design."
 - c. Pursuant to 40 C.F.R. § 265.195(b), with exceptions not herein applicable, "the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) The aboveground portions of the tank system, if any, to detect corrosion or releases of

waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).”

Permit Exemption Conditions - Air Emission Standards for Equipment Leaks

38. Subpart BB (entitled “Air Emission Standards for Equipment Leaks”) of 40 C.F.R. Part 265 includes each of the following provisions and requirements pertaining to the “Applicability”, “Definitions”, “Standards: Pumps in light liquid service”, “Standards: Valves in gas/vapor service or in light liquid service”, “Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak”, “Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair”, “Test methods and procedures” and “Recordkeeping requirements”:
- a. Pursuant to 40 C.F.R. § 265.1050(a) and with exceptions and exclusions not herein applicable, the regulations in 40 C.F.R. Part 265, Subpart BB, “apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.”
 - b. Pursuant to 40 C.F.R. § 265.1050(b), in relevant part and with exceptions and exclusions not herein applicable, 40 C.F.R. Part 265, Subpart BB “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: (1) A unit that is subject to the permitting requirements of 40 CFR part 270, or * * * (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”
 - c. Pursuant to 40 C.F.R. § 265.1050(c), “[e]ach piece of equipment to which [40 C.F.R. Part 265, Subpart BB] applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”
 - d. In relevant part, 40 C.F.R. § 265.1051 provides that, “[a]s used in [40 C.F.R. Part 265, Subpart BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . . , which section therein defines the term:
 - i. *equipment* to mean and include “each valve, pump . . . open ended valve or line, or flange or other connector . . .”; and

- ii. *in light liquid service* to mean “that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions”.

- e. Pursuant to 40 C.F.R. § 265.1052(a)(1) and with exceptions and exclusions (including those of 40 C.F.R. § 265.1050(d), (e) and (f) pertaining to *equipment in vacuum service*, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b). . . .”

- f. Pursuant to 40 C.F.R. § 265.1052(a)(2), “[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.”

- g. Pursuant to 40 C.F.R. § 265.1057(a), in relevant part and with exceptions not herein applicable, “[e]ach valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b). . . .”

- h. Pursuant to 40 C.F.R. § 265.1061(a), “an owner or operator subject to the requirements of 40 C.F.R. § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of valves to leak”, as described further in 40 C.F.R. § 265.1061(b) and (c).

- i. 40 C.F.R. § 265.1062(a) provides that an owner or operator subject to the requirements of 40 C.F.R. § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in 40 C.F.R. § 265.1062(b)(2) and (3).

- j. 40 C.F.R. § 265.1063(a) provides that each owner or operator subject to the provisions of 40 C.F.R. Part 265, Subpart BB, “shall comply with the test methods and procedures requirements provided in [40 C.F.R. § 265.1063].”

Factual Findings - Permit Exemption Conditions

39. At all times relevant to this CA, Respondent has been 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.
40. At all times relevant to this CA, Respondent was the *generator of hazardous waste*, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., having EPA Hazardous Waste Numbers D001 and D002, respectively, as specified in 40 C.F.R. §§ 261.21 and 261.22 and incorporated by reference in 25 Pa. Code § 261a.1., including D001 *hazardous waste* with an organic concentration of at least 10 percent by weight.
41. At all times relevant to this CA, Respondent engaged in the *storage* of D001 and D002 *hazardous waste* in *container[s]* and in *tanks* as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1.
42. At all times relevant to this CA, Respondent engaged in the *storage* of D001 *hazardous waste* with an organic concentration of at least 10 percent by weight, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., at the Facility and prior to off-site shipment for disposal, in:
 - a. the "Pad A Pit", a 720 gallon stationary steel tank that is contained within a concrete vault;
 - b. "V-262", a 360 gallon stationary steel tank contained within a concrete dike; and
 - c. "V-263", a 360 gallon stationary steel tank contained within a concrete dike.
43. The Pad A Pit, V-262 and V-263 tanks, along with their associated ancillary *equipment* and containment systems, each are *tanks* and *tank systems*, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., for which construction commenced subsequent to January 16, 1993 and, therefore, each meets the definition of a *new tank system or new tank component*, as defined in 25 Pa. Code § 260a.10.
44. The Pad A Pit, V-262 and V-263 *tank systems*, as that term is defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., each contain *equipment*

that includes a pump and numerous valves, flanges and other connectors *in light liquid service*, as these terms are defined in 40 C.F.R. § 264.1031 and incorporated by reference in 40 C.F.R. § 265.1051 and in 25 Pa. Code §§ 264a.1. and 265a.1.

45. The Pad A Pit, V-262 and V-263 *tank systems* and their associated ancillary *equipment*, are not in vacuum service and all routinely contain and contact hazardous wastes with organic concentrations that equal or exceed 10 percent by weight for periods in excess of 300 hours per calendar year.
46. Each of the respective areas of the Facility where the Pad A Pit, V-262 and V-263 *tanks*, along with their associated *tank systems*, ancillary *equipment* and containment systems, are located, is a *hazardous waste management unit* as that terms is defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1.
47. Respondent represents that it intended to operate the Pad A Pit, V-262 and V-263 tanks in a manner that would allow hazardous waste to flow through, and not accumulate in, such tanks. Nevertheless, from September 2003 through May 15, 2007, the Respondent did engage in the *storage* of D001 *hazardous waste* with an organic concentration of at least 10 percent by weight in the Pad A Pit, V-262 and V-263 *tanks* and *tank systems* prior to shipping such *hazardous waste* off-site for disposal.
48. On May 15, 2007, at the time of the EPA Inspection of the Facility, each of the V-262 and V-263 *hazardous waste storage tanks* was labeled with a tank number and the words "heavy waste", but was not labeled or otherwise marked clearly with the words "Hazardous Waste", as required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(3).
49. On May 15, 2007, at the time of the EPA Inspection of the Facility, the Respondent was engaged in the *storage* of D001 and D002 *hazardous waste* in a 500 milliliter flask (*i.e.*, a *container*) located inside of the Quality Control Laboratory of the Facility, a location at or near the point of generation of the waste. Such *container* was marked only with the word "Waste" and was not marked with the words "Hazardous Waste" or with any other words identifying its contents, as required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(3) and (c)(1)(ii).
50. On May 15, 2007, at the time of the EPA Inspection of the Facility, a 55-gallon container containing D001 *hazardous waste* was located outside of the Quality Control Laboratory of the Facility in a location that was not at or near the point of generation where such hazardous wastes initially accumulate and was not under the control of the operator of the process generating such waste. The container was marked with the words "Hazardous Waste" but was not marked with the date upon which the period of *hazardous waste*

accumulation began, as required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(2) and (c)(1)(ii).

51. On May 15, 2007, at the time of the EPA Inspection of the Facility, the following *containers of hazardous waste* were not being kept closed during storage at times when it was not necessary to add or remove waste, as required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart I, including 40 C.F.R. § 265.173(a):
- a. a 2.5 gallon red container of D001/D002 hazardous waste, located in a sink inside of the Quality Control Laboratory of the Facility;
 - b. A 500 milliliter flask containing D001/D002 hazardous waste, identified in Paragraph 49, above; and
 - c. The 55-gallon container of D001 *hazardous waste*, identified in Paragraph 50, immediately above.
52. From September 2003 through May 15, 2007, and with respect to the Facility's Pad A Pit, V-262 and V-263 *tanks and tank systems*, Respondent had not obtained written structural integrity assessments, reviewed and certified by a Professional Engineer in accordance with 40 C.F.R. § 270.11(d), that included the following information required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart J, including 40 C.F.R. § 265.192(a)(1), (2) and (5):
- a. Design standards according to which the tanks and ancillary equipment were constructed, as required pursuant to pursuant to 40 C.F.R. § 265.192(a)(1);
 - b. Hazardous characteristics of the wastes to be handled as required pursuant to 40 C.F.R. § 265.192(a)(2); and
 - c. Design considerations to ensure that the tank foundations will maintain the load of a full tank and will withstand the effects of frost heave as required pursuant to 40 C.F.R. § 265.192(a)(5).
53. From September 2003 through May 15, 2007, and with respect to the Facility's Pad A Pit, V-262 and V-263 *hazardous waste storage tanks* and their associated ancillary equipment and containment systems, Sartomer failed to perform the following inspection activities, required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the

requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart J, including 40 C.F.R. § 265.195(a), 265.195(b)(1) through (3) and 265.195(g):

- a. Failure to inspect, at least once each operating day, data gathered from the Pad A Pit, the V-262 and the V-263 *tank system* monitoring and leak detection equipment to ensure that each tank system was being operated according to its design, as required pursuant to 40 C.F.R. § 265.195(a);
- b. Failure to inspect, at least once each operating day:
 - (i) the Pad A Pit, the V-262 and the V-263 *tank system* overflow/spill control equipment to ensure that it was in good working order, as required pursuant to 40 C.F.R. § 265.195(b)(1);
 - (ii) the above ground portions of the Pad A Pit, V-262 and the V-263 *tank systems* to detect corrosion or releases of waste, as required pursuant to 40 C.F.R. § 265.195(b)(2); and
 - (iii) the construction materials and the area immediately surrounding the externally accessible portions of the Pad A Pit, the V-262 and the V-263 *tank systems* and secondary containment structures to detect erosion or signs of releases of hazardous waste, as required pursuant to 40 C.F.R. § 265.195(b)(3).

54. Respondent maintains that it had an inspection program at the Facility pursuant to 25 Pa. Code Section 262.a.10, which incorporates by reference the requirements of 40 C.F.R. Sec. 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart BB. However, from September 2003 through May 15, 2007, and with respect to the ancillary *equipment* associated with each of the Pad A Pit, V-262 and V-263 *tanks, tank systems* and *new tank system[s] or new tank component[s]*, Sartomer failed to perform the following activities, required pursuant to 25 PA Code Section 262a.10., which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart BB, including, but not limited to, 40 C.F.R. §§ 265.1050(c), 265.1052(a)(1) and (2) and 265.1057(a):

- a. Failure to mark each piece of *equipment* to which the requirements of 40 C.F.R. Part 265, Subpart BB applies, in such a manner that it could be distinguished readily from other pieces of equipment, as required pursuant to 40 C.F.R. § 265.1050(c);

- b. Failure to:
- (i) monitor monthly each of the three pumps *in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b), as required pursuant to 40 C.F.R. § 265.1052(a)(1); and
 - (ii) check by visual inspection each calendar week, the three pumps *in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* for indications of liquids dripping from the pump seal, as required pursuant to 40 C.F.R. § 265.1052(a)(2); and
- c. Failure to monitor monthly each valve *in light liquid service* to detect leaks by:
- (i) the methods specified in 40 C.F.R. § 265.1063(b), as required pursuant to 40 C.F.R. § 265.1057(a);
 - (ii) one of the alternative standards described in 40 C.F.R. § 265.1061(b) and (c), as required pursuant to 40 C.F.R. § 265.1061(a); or
 - (iii) one of the alternative work practices specified in 40 C.F.R. § 265.1062(b)(2) and (3), as required pursuant to 40 C.F.R. § 265.1062(a).

Legal Conclusions - Failure to Comply with Permit Exemption Conditions

55. For each of the reasons and during each of the times set forth in Paragraphs 48 through 54, above, Respondent failed to comply with the conditions, identified in Paragraph 35, above, for temporary (*i.e.*, 90 days or less) or satellite accumulation of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a) and (c), as incorporated by reference in 25 PA Code Section 262a.10., and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.

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

56. 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 Keep Containers of Hazardous Waste Closed During Storage)

57. The allegations of Paragraphs 1 through 56, above, are incorporated herein by reference as though fully set forth at length.
58. 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.”
59. On May 15, 2007, each of the three *containers of hazardous waste* identified in Paragraph 51, above, were being stored at the Facility and were not kept closed at times when it was not necessary to add or remove waste.
60. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding *hazardous waste* in containers that were not kept closed during storage, when it was not necessary to add or remove waste.

COUNT III

(Failure to Comply with Tank System Design/Installation Requirements)

61. The allegations of Paragraphs 1 through 60, above, are incorporated herein by reference as though fully set forth at length.
62. 25 PA Code Section 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.192(a), provides, in relevant part and with exceptions not herein applicable, that “[o]wners or operators of new tank systems or components must obtain. . . a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with [40 C.F.R.] § 270.11(d) . . . , attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. This assessment . . . must include, at a minimum, the following information: (1) Design standard(s) according to which the tank(s) and/or the ancillary equipment are constructed; (2) Hazardous characteristics of the waste(s) to be handled; * * * (5) Design considerations to ensure that: (i) Tank foundations will maintain the load of a full tank; * * * (iii) Tank systems will withstand the effects of frost heave.”

63. As of May 15, 2007, Sartomer had not obtained a written structural integrity assessment that had been reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), or that included the relevant and applicable information required pursuant to 40 C.F.R. § 264.192(a)(1), (2) and (5), for the V-262 and V-263 *new tank systems or components*.
64. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.192(a)(1), (2) and (5), by failing to obtain a written structural integrity assessment, reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), that included the information required pursuant to 40 C.F.R. § 264.192(a)(1), (2) and (5).

COUNT IV

(Failure to Comply with Tank System Inspection Requirements)

65. The allegations of Paragraphs 1 through 64, above, are incorporated herein by reference as though fully set forth at length.
66. 25 PA Code Section 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.195(a), provides that “[t]he owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.”
67. 25 PA Code Section 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.195(b), provides that “[t]he owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.”
68. 25 PA Code Section 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.195(c), provides, with exceptions not herein applicable, that “. . . the owner or operator must inspect at least once each operating day: (1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste; (2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).
69. From September 2003 through May 15, 2007, with respect to the Pad A Pit, V-262 and V-263 *hazardous waste storage tanks* and their associated ancillary equipment and containment systems, Respondent failed to:

- a. develop and follow a schedule and procedure for inspecting the Pad A Pit, the V-262 and the V-263 tank system overflow controls, as required pursuant to 40 C.F.R. § 264.195(a);
 - b. inspect, at least once each operating day, data gathered from the Pad A Pit, the V-262 and the V-263 tank system monitoring and leak detection equipment to ensure that each tank system was being operated according to its design, as required pursuant to 40 C.F.R. § 264.195(b); and
 - c. inspect, at least once each operating day: aboveground portions of the Pad A Pit, the V-262 and the V-263 tank systems to detect corrosion or releases of waste; and the construction materials and the area immediately surrounding the externally accessible portion of the Pad A Pit, the V-262 and the V-263 tank systems, including the secondary containment systems, to detect erosion or signs of releases of hazardous waste, as required pursuant to 40 C.F.R. § 264.195(c)(1) and (2).
70. Respondent violated 25 Pa. Code § 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.195(a), (b) and (c), by failing to: (a) develop and follow a schedule and procedure for inspecting the Pad A Pit, the V-262 and the V-263 tank system overflow controls; (b) inspect, at least once each operating day, data gathered from the Pad A Pit, the V-262 and the V-263 tank system monitoring and leak detection equipment to ensure that each tank system was being operated according to its design; and (c) inspect, at least once each operating day, the aboveground portions of the Pad A Pit, the V-262 and the V-263 tank systems to detect corrosion or releases of waste and the construction materials and area immediately surrounding the externally accessible portion of the Pad A Pit, the V-262 and the V-263 tank systems, including the secondary containment systems, to detect erosion or signs of releases of hazardous waste.

COUNT V

(Failure to Comply with Air Emission Standards Equipment Marking Requirements)

71. The allegations of Paragraphs 1 through 70, above, are incorporated herein by reference as though fully set forth at length.
72. 25 PA Code Section 264a.1. incorporates by reference the "Applicability" requirements of 40 C.F.R. § 264.1050, which include the following provisions:
- a. 40 C.F.R. § 264.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 264, Subpart BB, "apply to owners and operators of facilities that treat, store, or dispose of hazardous

wastes”;

- b. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 264, Subpart BB, “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: (1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”; and
 - c. 40 C.F.R. § 264.1050(d) provides that “[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”
73. 25 PA Code Section 264a.1. incorporates by reference the “Definitions” of 40 C.F.R. § 264.1051, which provide, in relevant part, that: “[a]s used in this [40 C.F.R. Part 264] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .”, which section defines the term “*equipment*” to mean and include “each valve, pump, . . . or flange or other connector”
74. From September 2003 through May 15, 2007, and as alleged in Paragraph 47, above, the Respondent engaged in the *storage* of D001 *hazardous waste* with an organic concentration of at least 10 percent by weight in the Pad A Pit, V-262 and V-263 *tanks* and *tank systems*. Such *tanks* and *tank systems* were subject to the permitting requirements of 40 C.F.R. Part 270 because of the Respondent’s failure to comply with the conditions that are identified in Paragraph 35, above, for temporary (i.e., 90 days or less) accumulation of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10.
75. At all times relevant to this CA, the Pad A Pit, V-262 and V-263 *tank systems* each included a pump, valves, flanges and/or other connectors *in light liquid service*, which *equipment* was not in vacuum service and routinely contained or contacted hazardous waste with organic concentrations that equaled or exceeded 10 percent by weight for periods in excess of 300 hours per calendar year.
76. From September 2003 through May 15, 2007, the *equipment* (i.e., the pump, valves, flanges and/or other connectors) associated with the Pad A Pit, V-262 and V-263 *tank systems* was not marked in such a manner that it could be distinguished readily from other pieces of equipment.

77. Respondent violated 25 Pa. Code § 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.1050(d), by failing to mark *equipment* (i.e., the pump, valves, flanges and/or other connectors associated with the Pad A Pit, V-262 and V-263 *tank systems*) that was subject to the air emission standards for equipment leaks of 40 C.F.R. Part 264, Subpart BB, in a manner by which they could be distinguished readily from other pieces of equipment.

COUNT VI

(Failure to Comply with Monitoring Requirements for Pumps in Light Liquid Service)

78. The allegations of Paragraphs 1 through 77, above, are incorporated herein by reference as though fully set forth at length.
79. 25 Pa. Code § 264a.1. incorporates by reference the “Standards: Pumps in light liquid service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1052 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1052(a)(1) provides, with exceptions and exclusions (including those of 40 C.F.R. § 264.1050(e), (f) and (g) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b) . . .”.
 - b. 40 C.F.R. § 264.1052(a)(2) provides that “[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.”
80. 25 Pa. Code § 264a.1. incorporates by reference the “Test methods and procedures” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1063 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1063(b)(1) provides that “[l]eak detection monitoring, as required in [40 C.F.R.] §§ 264.1052 – 264.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60.”
 - b. 40 C.F.R. § 264.1063(d)(1) through (3) provides that “[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or

exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 . . . ; (2) Method 9060A . . . SW-846 . . . ; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required] [d]ocumentation of a waste determination [made] by knowledge. . . .”

81. At all times relevant to the allegations in this CA, the Pad A Pit, V-262 and V-263 *tank systems* each included a pump *in light liquid service*, within the meaning and definition of 40 C.F.R. § 264.1051, as incorporated by referenced in 25 Pa. Code § 264a.1., which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in 25 Pa. Code § 264a.1.
82. From September 2003 through May 15, 2007, each of the three pumps *in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* were neither “monitored monthly to detect leaks” by the Respondent pursuant to the methods specified in 40 C.F.R. § 264.1063, in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(1), nor “checked by visual inspection each calendar week for indications of liquid dripping from the pump seal” by the Respondent in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(2).
83. Respondents violated 25 Pa. Code § 264a.1., which incorporates by reference the requirements of 40 C.F.R. § 264.1052(a)(1) and (2), by failing to monitor each of the three pumps *in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* at the Facility monthly, by the methods specified in 40 C.F.R. § 264.1063, to detect leaks and to check each of these pumps by visual inspection each calendar week for indications of liquid dripping from the pump seal.

COUNT VII

(Failure to Comply with Air Emission Standards for Valves in Light Liquid Service)

84. The allegations of Paragraphs 1 through 83, above, are incorporated herein by reference as though fully set forth at length.
85. 25 Pa. Code § 264a.1. incorporates by reference the “Standards: Valves in gas/vapor service or in light liquid service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1057 and provide, in pertinent part, as follows:
 - a. 40 C.F.R. § 264.1057(a) provides, in relevant part, with exceptions not herein applicable, that “[e]ach valve in . . . light liquid service shall be monitored

monthly to detect leaks by the methods specified in [40 C.F.R.]
§ 264.1063(b). . . .”

86. 25 Pa. Code § 264a.1. incorporates by reference the requirements of 40 C.F.R. § 264.1061(a), which provides that “an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect to have all valves within a hazardous waste management unit to comply with an alternative standard that allows no greater than 2 percent of valves to leak”, as described further in 40 C.F.R. § 264.1061(b) and (c);
87. 25 Pa. Code § 264a.1. incorporates by reference the requirements of 40 C.F.R. § 264.1062(a), which provides that an owner or operator subject to the requirements of 40 C.F.R. § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3).
88. From September 2003 through May 15, 2007 each of the valves *in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* were not monitored monthly by the Respondent to detect leaks in accordance with: the methods specified in 40 C.F.R. § 264.1063(b), as required pursuant to 40 C.F.R. § 264.1057(a); one of the alternative standards described in 40 C.F.R. § 264.1061(b) and (c), as required pursuant to 40 C.F.R. § 264.1061(a); or one of the alternative work practices specified in 40 C.F.R. § 264.1062(b)(2) and (3), as required pursuant to 40 C.F.R. § 264.1062(a).
89. Respondent violated 25 Pa. Code § 264a.1., which incorporates by reference the requirements of 40 C.F.R. §§ 264.1057(a), 264.1061(b) and (c), and 264.1062(a), by failing to comply with any of the standards therein, for the *valves in light liquid service* associated with the Pad A Pit, V-262 and V-263 *tank systems* at the Facility.

COUNT VIII

(Failure to Contain Universal Waste Lamps Properly)

90. The allegations of Paragraphs 1 through 89, above, are incorporated herein by reference as though fully set forth at length.
91. 25 PA. Code Section 266b.1, which incorporates by reference the universal waste lamp management standards of 40 C.F.R. § 273.13(d), provides, in pertinent part that “[a] small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain

closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”

92. On May 15, 2007, at the time of the EPA inspection of the Facility, Respondent was a small quantity handler of universal waste and was accumulating universal waste lamps in an open cardboard box at a maintenance area of the Facility.
93. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.13(d), by storing universal waste lamps at the Facility in a container that was not closed.

COUNT IX

(Failure to Comply with Universal Waste Accumulation Time Limit)

94. The allegations of Paragraphs 1 through 93, above, are incorporated herein by reference as though fully set forth at length.
95. 25 PA Code Section 266b.1., which further incorporates by reference the 40 C.F.R. § 273.15 universal waste accumulation time limits, provides, in pertinent part and with exceptions not herein applicable, as follows:
 - (a) 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, or received from another handler, unless the requirements of paragraph (b) of this section are met.
 - (b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
96. From June 10, 2005 until the time of the EPA inspection of the Facility on May 15, 2007, Respondent accumulated universal waste batteries in a box which was located in an office area of the Facility.
97. The universal waste batteries identified in Paragraph 96, above, were being accumulated at the Facility for a period longer than one year from the date of their generation and such activity was not solely for the purpose of accumulating such quantities of universal waste as were necessary to facilitate proper recovery, treatment, or disposal.

98. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.15(a), by accumulating universal waste batteries at the Facility for a period longer than one year from the date of its generation without meeting the requirements of 40 C.F.R. § 273.15(b).

IV. COMPLIANCE ORDER

99. Respondent shall perform each of the following Compliance Tasks within the time periods specified. "Days" as used herein shall mean calendar days unless specified otherwise.
- a. Immediately cease the storage of hazardous wastes (in containers, tanks or in any other location) at the Facility except in accordance with: a valid permit issued pursuant to 25 Pa. Code § 270a.1. and/or EPA's hazardous waste management regulations, 40 C.F.R. Part 270, as applicable; or a valid exemption or exclusion allowed by the federally-authorized PaHWR.
 - b. Immediately begin to manage universal waste lamps at the Facility in a way that prevents releases of any universal waste or component of a universal waste to the environment by containing all universal waste lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps and by keeping all such containers and packages closed and in a condition required pursuant to 25 PA Code Section 266b.1, which incorporates by reference the universal waste lamp management standards of 40 C.F.R. § 273.13(d).
 - c. Immediately limit universal waste accumulation at the Facility to a period that is not longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of 40 C.F.R. § 273.15(b) are met, as required pursuant to 25 PA Code Section 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.15(d).
100. Within thirty (30) days after the Effective Date of the CA, Respondent further shall certify to Complainant, in writing, that Respondent and the Facility currently are in compliance with all relevant provisions of the authorized Pennsylvania Hazardous Waste Management Program and RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this Consent Agreement. Such certification, and any other notice, certification, data presentation, or document submitted by Respondent pursuant to this Section IV ("Compliance Order") which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by a

responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

101. Any certification submitted by Respondent pursuant to this Section IV ("Compliance Order") shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

102. Any certification, notice, data presentation, or document submitted by Respondent pursuant to this Section IV ("Compliance Order") shall be sent to the attention of:

Kenneth Cox
Environmental Engineer
U.S. EPA, Region III
Land Enforcement Branch (3LC70)
1650 Arch Street
Philadelphia, PA 19103-2029.

V. CIVIL PENALTIES

103. Respondent agrees to pay a civil penalty in the amount of **One Hundred and Eight Thousand Dollars (\$108,000.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
104. The civil penalty settlement amount set forth in Paragraph 103, immediately above, was determined after consideration of the statutory factors 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 Section 3008(a)(3) and (g) of RCRA, 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 September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* (“Skinner Memorandum”). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum and in the RCRA Penalty Policy, penalties for RCRA violations occurring after January 30, 1997 were increased by 10% to account for inflation, not to exceed a \$27,500.00 per violation statutory maximum penalty. Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after March 15, 2004 have been increased by an additional 17.23% to account for subsequent inflation, not to exceed a current \$32,500.00 per violation statutory maximum penalty.
105. Payment of the civil penalty as required by Paragraph 103, above, shall be made via one of the following methods:
- a. All checks shall be made payable to “**United States Treasury**”;
 - b. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- c. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency – Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- d. 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”

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

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

- f. On-Line Payment Option: WWW.PAY.GOV

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

- g. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

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

106. All payments by the Respondent shall include the Respondent's full name and address and the EPA Docket number of this Consent Agreement (RCRA-03-2008-0411).
107. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check or EFT authorization, 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.

108. 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.
109. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).
110. 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.
111. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
112. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VI. OTHER APPLICABLE LAWS

113. 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

114. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this Consent Agreement. 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

115. Payment of the civil penalty as specified in Section V ("Civil Penalties"), above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a), 42 U.S.C. § 6928(a), for the violations alleged in this Consent Agreement.

IX. PARTIES BOUND

116. This Consent Agreement and the accompanying Final Order 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 Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

X. EFFECTIVE DATE

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

*In Re: Sartomer Company, Inc.
EPA Facility I.D. #PAD042259374*

*Consent Agreement
Docket No. RCRA-03-2008-0411*

XI. ENTIRE AGREEMENT

118. 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 Sartomer Company, Inc.:

Date: 9/11/08

By: Larry G. Athens
Larry G. Athens
Vice President of Operations
Sartomer Company, Inc.

In Re: Sartomer Company, Inc.
EPA Facility I.D. #PAD042259374

Consent Agreement
Docket No. RCRA-03-2008-0411

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 9/15/2008

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 Final Order.

Date: 9/15/08

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

2008-07-22 11:11:32

In Re:)	
)	
Sartomer Company, Inc.	)	Docket No. RCRA-03-2008-0411
)	
RESPONDENT.	)	Proceeding Under Section
	)	3008(a) and (g) of the
Sartomer Company, Inc.	)	Resource Conservation and
610 South Bolmar Street	)	Recovery Act, as amended,
West Chester, Pennsylvania 19382	)	42 U.S.C. § 6928(a) and (g)
EPA Facility I.D. # PAD042259374)	
)	
FACILITY.)	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division (formerly the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III, and Respondent, Sartomer Company, 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 by *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 One Hundred and Eight Thousand Dollars (\$108,000.00) 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 Respondents pay a civil monetary penalty of One Hundred and Eight Thousand Dollars (\$108,000.00) 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.

9/22/08
Date

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

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

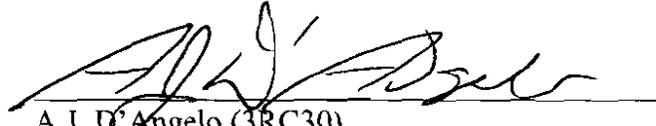
In Re:)	
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610 South Bolmar Street)	Recovery Act, as amended,
West Chester, Pennsylvania 19382)	42 U.S.C. § 6928(a) and (g)
EPA Facility I.D. # PAD042259374)	
)	
FACILITY.)	

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, to the following person at the following address:

Douglas W. Frankenthaler, Esquire
Cozen O'Connor
457 Haddonfield Road
Suite 300
Cherry Hill, New Jersey, 08002-2220
(Article No. 7004 2890 0000 5075 5060)

9/22/2008
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