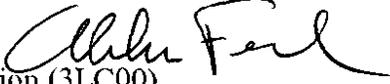


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Transmittal Memorandum
Consent Agreement and Final Order
In the Matter of Sherwin-Williams Company
U.S. EPA Docket No. RCRA-03-2011-0257

FROM:  Marcia E. Mulkey
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

REGIONAL PLANNING CLERK
EPA REGION III, PHILA. PA

2011 SEP 21 AM 11:10

RECEIVED

The attached Consent Agreement and Final Order ("CAFO") have been negotiated pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6929(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

The CAFO resolves violations by Sherwin-Williams Company, an Ohio corporation ("Respondent"), of RCRA Subtitle C and the Maryland Hazardous Waste Management Regulations (or "MdHWMR"), as codified in the Code of Maryland Regulations ("COMAR"), Title 10, Subtitle 51 *et seq.* with regard to the operation of the facility located at 2325 Hollins Ferry Road, Baltimore, Maryland (the "Facility"). Please refer to the CAFO for further details concerning the violations at the Facility.

Under the terms of the settlement, Respondent will pay a civil penalty in the amount of \$570,000.00 pursuant to the terms and conditions set forth in the CAFO. This settlement was determined after consideration of the statutory factors set forth in Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), and EPA's June 2003 RCRA "Civil Penalty Policy" ("RCRA Penalty Policy"). This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

We concur with the terms of the enclosed Consent Agreement and Final Order. Accordingly, we recommend that you sign the Final Order and return it to the Office of Regional Counsel for further processing.

cc: Louis F. Ramalho, Esq.

Michael S. McMahon, Esq.
Counsel for Respondent

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

In Re:

**Sherwin-Williams Company
 101 W. Prospect Avenue
 Cleveland, OH 44115**

RESPONDENT,

**Sherwin-Williams Company
 2325 Hollins Ferry Road
 Baltimore, MD 21230
 EPA ID. #MDD000215160**

FACILITY.

Docket No. RCRA-03-2011-0257

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

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

This Consent Agreement (or "CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and Sherwin-Williams Company ("Sherwin-Williams" or "Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the 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 or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland has been granted final authorization to administer its hazardous waste management program, set forth at the Code of Maryland Regulations ("COMAR"), Title 10, Subtitle 51 *et seq.*, *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The State of Maryland Hazardous Waste Management Regulations ("MdHWMR") originally were authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR

set forth at COMAR, Title 26, Subtitle 13, were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised federally-authorized program have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). To the extent that any violation alleged in this Consent Agreement and Final Order (“CAFO”) is based on the provisions of the federal hazardous waste management program added or amended by the Hazardous and Solid Waste Amendments of 1984 (“HWSA”) (Pub. Law No. 98-616), which amended Subtitle C of RCRA and the State of Maryland has not yet received final authorization at the time of such violation, such provisions of the federal hazardous waste management program are cited as authority for such allegations.

The federally authorized provisions of the MdHWMR are requirements of RCRA Subtitle C and, accordingly, are enforceable by EPA pursuant to Section 3008(a) of RCRA. 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 COMAR requirements promulgated thereunder, at its paint manufacturing facility located at 2325 Hollins Ferry Road, Baltimore, Maryland (the “Facility”).

Pursuant to Section 22.13(b) of the *Consolidated Rules of Practice*, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and resolves alleged violations of RCRA, and of the federally authorized COMAR requirements promulgated thereunder, at the Respondent’s Facility.

In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the State of Maryland, through the Maryland Department of Environment (“MDE”), of EPA’s intent simultaneously to commence and conclude this action by entering into a CAFO with Respondent that resolves the violations alleged herein.

II. GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, immediately above.
3. For purposes of this proceeding only, Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. 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.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA.
8. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
9. 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. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following facts and conclusions of law:
 - a. Respondent is an Ohio corporation and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and as defined in 40 C.F.R. § 260.10 and incorporated by reference in COMAR 26.13.01.03B.
 - b. Respondent is, and has been at all times relevant to this CA, the "owner" and "operator" of the Facility identified above, and further described below, as those terms are defined in 40 C.F.R. § 260.10 and in COMAR 26.13.01.03B.
 - c. The Respondent's Facility, located at 2325 Hollins Ferry Road, Baltimore, Maryland, is a manufacturer of paint and other coatings, where business activities typically include the use of special resins and pigments, and the use of solvents for the cleaning of mixing tanks.
 - d. Respondent is assigned the NAICS code: 325510.
 - e. On August 11, 1980, Respondent submitted to EPA a Notification of Hazardous Waste Activity ("Notification") for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying the Facility as a large quantity generator of hazardous waste. The Facility was assigned EPA ID No. MDD000215160.

- f. Respondent is and, at all times relevant to this CAFO, has been a “generator” of, and has engaged in the “storage” at the Facility of materials described below that are “solid wastes” and “hazardous waste”, as those terms are defined in 40 C.F.R. § 260.10. and in COMAR 26.13.01.03B.
- g. Respondent generates waste paint-related materials that bear the following hazardous waste codes: D001, D035, F003, and F005.
- h. On June 25-26, 2009, a duly authorized representative of EPA conducted a compliance evaluation inspection (the “CEI”) at the Facility to assess the Respondent’s compliance with federally authorized COMAR requirements.
- i. On the basis of the information collected during EPA’s CEI and Respondent’s responses dated July 15, 2009, February 22, 2010, April 13, 2010, October 1, 2010, and January 20, 2011 to EPA’s Information Request Letters issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, including responses provided by Respondent’s vendors or customers, EPA determined that Respondent violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and the federally authorized COMAR requirements promulgated thereunder.

COUNT I
(Operating Without a Permit)

- 11. The allegations of Paragraphs 1 through 10. above, are incorporated herein by reference as though fully set forth at length.
- 12. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01, provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.
- 13. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, “interim status”) until such time as final administrative disposition of such application is made.
- 14. At all times during the period of the alleged violations in this CAFO, Respondent’s Facility never had “interim status” pursuant to RCRA Section 3005(e) or COMAR 26.13.06 or a permit issued pursuant to RCRA Section 3005(a) or COMAR 26.13.07 for the treatment, storage, or disposal of hazardous waste.

15. COMAR 26.13.03.05E(1) provides that a generator may accumulate hazardous waste on-site without a permit or without having interim status for 90 days or less, if:
 - (a) The waste is shipped off-site within 90 days to a permitted facility or placed in an on-site permitted facility;
 - (b) The generator accumulates the waste in containers, tanks or certain drip pads;
 - (c) Containers used to accumulate the waste meet the standards of COMAR 26.13.03.05A (Packaging);
 - (d) The generator accumulates the waste in containers in accordance with COMAR 26.13.05.09;
 - (e) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - (f) Each container is properly labeled and marked according to COMAR 26.13.03.05.B and C (“Labeling and Marking”), and labeled or marked clearly with the words “Hazardous Waste,” while being accumulated on site;
 - (g) The generator complies with the requirements for owners and operators in COMAR 26.13.05.02G, .03B, and .04G(2) (“Personnel Training”, “Preparedness and Prevention”, and “Contingency Plan and Emergency Procedures”, respectively), and
 - (h) The generator, in accumulating waste in tanks, must, among other things, clearly mark or label the tanks with the words “Hazardous Waste” while waste is being accumulated in tanks, and complies with the requirements set forth in COMAR 26.13.05.10.D(2)(c) and 26.13.05.10.D(2)(d).
16. COMAR 26.13.05.09(B), referenced in Paragraph 15(d), above, provides, in pertinent part, that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from such container to a container that is in good condition.
17. COMAR 26.13.05.09(D), referenced in Paragraph 15(d), above, provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.
18. COMAR 26.13.05.09(E), referenced in Paragraph 15(d), above, provides, in pertinent part, that the owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers.

19. COMAR 26.13.05.03B, referenced in Paragraph 15(g), above, provides, in pertinent part, that the owner or operator shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
20. COMAR 26.13.05.04G(2), referenced in Paragraph 15(g), above, provides, in pertinent part, that, whenever there is a release, fire, or explosion, the emergency coordinator for the facility shall immediately identify the character, exact source, amount, and areal extent of any released materials.
21. COMAR 26.13.05.10D(2)(c) and COMAR 26.13.05.10.D(2)(d), referenced in Paragraph 15(h), above, provides, in pertinent part, that the owner or operator shall inspect at least once each operating day the above-ground portions of tank systems to detect corrosion or releases of waste, and the construction materials of, and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.
22. COMAR 26.13.03.05E.3, provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in COMAR 26.13.02.19E 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 COMAR 26.13.03.05E.(1) provided the generator:
 - i. Complies with specified provisions of 40 C.F.R. Part 265, Subpart I (relating to the use and management of containers), specifically, 40 C.F.R. §§ 265.171, .172, and .173(a); and
 - ii. Marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
23. From March 6, 2009 until June 30, 2009, Respondent stored on the East Drum Pad area at the Facility, for periods in excess of 90 days, four (4) 55-gallon drums of waste paint related materials containing D001, F003, and F005 hazardous wastes.
24. From March 18, 2009 until June 30, 2009, Respondent stored in the greater than 90 day storage area at the Facility, for periods in excess of 90 days, ten (10) 55-gallon drums of waste paint related materials containing D001, F003, and F005 hazardous wastes.
25. At the time of the June 25-26, 2009 CEI, Respondent failed to properly label as "Hazardous Waste" and/or Respondent failed to have an accumulation start date for the following hazardous waste containers while being stored at the Facility:

- A. Four (4) 55-gallon drums of waste paint related materials containing D001, F003, and F005 hazardous wastes were being stored at the Facility in Building K2 without an accumulation start date for such hazardous waste containers;
 - B. Two (2) 55-gallon drums of waste paint related materials containing D001 hazardous waste were being stored at the Facility in the Highway Process Area without an accumulation start date for such hazardous waste containers and without being labeled as "Hazardous Waste";
 - C. Two (2) 55-gallon drums of waste paint related materials containing D001 hazardous waste were being stored at the Facility in the Tank Farm E Loading Area without an accumulation start date for such hazardous waste containers and without being labeled as "Hazardous Waste";
 - D. Two (2) 5-gallon pails of waste resin containing D001 hazardous waste were being stored at the Facility in the Tank Farm E Loading Area without an accumulation start date for such hazardous waste containers and without being labeled as "Hazardous Waste"; and
 - E. Eighty-eight (88) 55-gallon drums and eight (8) 275-gallon totes of waste paint related materials containing either D001, D035, F003, F005, U161 and/or U002 hazardous wastes were being stored at the Facility on the East Drum Pad without an accumulation start date for such hazardous waste containers and without being labeled as "Hazardous Waste."
26. At the time of the June 25-26, 2009 CEI, Respondent failed to clearly mark one (1) satellite container in storage at the Facility in Building G1 either with the words "Hazardous Waste" or with other words that identified the contents of such container holding waste paint related materials containing D001 hazardous waste.
27. At the time of the June 25-26, 2009 CEI, Respondent had in storage on the East Drum Pad at the Facility a 275-gallon tote and a 55 gallon drum holding waste paint related materials containing D001, F003, and F005 hazardous wastes that were open at a time when it was not necessary to add or remove hazardous waste from such containers.
28. At the time of the June 25-26, 2009 CEI, Respondent had in storage on the Tank Farm E Loading Area at the Facility two 5-gallon pails and a 55 gallon drum holding waste resin containing D001 hazardous waste that were open at a time when it was not necessary to add or remove hazardous waste from such containers.
29. At the time of the June 25-26, 2009 CEI, Respondent had waste paint related materials containing either D001, D035, F003, and F005 hazardous wastes in either damaged and/or leaking containers in storage in the following areas at the Facility: A leaking 55-gallon satellite container located in the BOP Packaging Area of Building K; forty-four

(44) damaged 55-gallon drums located on the East Drum Pad, one of which was actively leaking its contents; one (1) 55-gallon container in the less than 90-day storage area at the Facility was damaged and the contents of the container were visible; and a 55-gallon satellite accumulation container located in the BOP Resin Loading Area at the Facility was weathered and severely rusted from being stored outside.

30. From at least October 8, 2008 until June 25, 2009, Respondent failed to inspect the East Drum Pad and the Tank Farm E Loading Area at the Facility, areas where hazardous waste containers are stored at the Facility, at least weekly, looking for leaks and for deterioration of containers.
31. At the time of the June 25-26, 2009 CEI, Respondent failed to inspect at least once each operating day the above-ground portions of the tank systems for Tanks E107 and E108 at the Facility to detect corrosion or releases of waste, and the construction materials of, and the area immediately surrounding the externally accessible portion of such tank systems, including the secondary containment system, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.
32. Each of the drums and/or containers of hazardous waste identified and referred to in Paragraphs 23 through 29, above, is a "container" as that term is defined in COMAR 26.13.01.03(9).
33. The units identified and referred to in Paragraph 31, above, are "tanks" and "tank systems" as that term are defined in COMAR 26.13.01.03(78) and (78-1), respectively.
34. The Facility is a hazardous waste storage "facility", as that term is defined in COMAR 26.13.01.03(23), with respect to the activities and units described in Paragraphs 23 through 31, above.
35. Respondent failed to comply with the conditions, identified in Paragraphs 23 through 31, above, for temporary (*i.e.*, 90 days or less) or satellite accumulation of hazardous waste by a generator that are required pursuant to COMAR 26.13.03.05E(1) and (3), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
36. Respondent violated COMAR 26.13.07.01 and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II

(Failure to Make Hazardous Waste Determinations)

37. The allegations of Paragraphs 1 through 36 of the CAFO are incorporated herein by reference as though fully set forth at length.

38. COMAR 26.13.03.02A requires that generators of “solid waste” as defined in COMAR 26.13.02.02 shall determine if that waste is a “hazardous waste” using the methods set forth in COMAR 26.13.03.02A. These methods require the generator to:
- a. First determine if the waste is excluded from regulation under COMAR 26.13.02.04-.4.5;
 - b. Then determine if the waste is listed as a hazardous waste in COMAR 26.13.02.15-.19; and
 - c. If the waste is not listed as a hazardous waste in COMAR 26.13.02.15-.19, the generator shall determine whether the waste is identified by either testing the waste according to the methods set forth in COMAR 26.13.02.10-.14, or, according to an equivalent method approved by the MDE under COMAR 26.13.01.04B, or apply knowledge of the hazardous characteristic of the waste in light of the materials or processed used.
39. As the person who generated the solid wastes described in this Count, Respondent was required by COMAR 26.13.03.02A to determine if the solid wastes it generated were hazardous wastes using the method described in Paragraph 38, above.
40. At the time of the June 25-26, 2009 CEI, Respondent generated the following solid wastes without making hazardous waste determinations: spent paint related materials as described in Paragraph 25.E., above, and used aerosol cans at the time of generation by Respondent at its Facility.
41. Respondent’s used aerosol cans are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11.
42. Respondent’s spent paint related materials are hazardous wastes because they either exhibit the characteristic of ignitability (D001) or toxicity (D035) pursuant to COMAR 26.13.02.11 and/or such materials are also listed as a hazardous waste (F003, F005) pursuant to COMAR 26.13.02.16.
43. Respondent’s acts and/or omissions as alleged in Paragraph 40, above, constitute violations of COMAR 26.13.03.02A.

COUNT III
(Failure to Maintain Facility)

44. The allegations of Paragraphs 1 through 43, above, are incorporated herein by reference as though fully set forth at length.

45. COMAR 26.13.05.03B, provides, in pertinent part, that the owner or operator shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
46. At the time of the June 25-26, 2009 CEI, Respondent had spent waste paint related materials containing either D001, D035, F003, and F005 hazardous wastes in either damaged and/or leaking containers in storage in the following areas at the Facility: A leaking 55-gallon satellite container located in the BOP Packaging Area of Building K; forty-four (44) damaged 55 gallon drums located on the East Drum Pad, one of which was actively leaking its contents; one (1) 55-gallon container in the less than 90-day storage area on the J Drum Pad was damaged and the contents of the container were visible; and a 55-gallon satellite accumulation container located in the BOP Resin Loading Area at the Facility was weathered and severely rusted from being stored outside.
47. At the time of the June 25-26, 2009 CEI, Respondent had waste paint resin related materials containing either D001, D035, F003, and/or F005 hazardous wastes that were released in multiple locations on the J Drum Pad and the East Drum Pad at the Facility.
48. Respondent's acts and/or omissions as alleged in Paragraphs 46 and 47, above, constitute violations of COMAR 26.13.05.03B.

COUNT IV

(Failure to Immediately Respond to a Release at the Facility)

49. The allegations of Paragraphs 1 through 48, above, are incorporated herein by reference as though fully set forth at length.
50. COMAR § 26.13.05.04G(2), provides, in pertinent part, that, whenever there is a release, fire, or explosion, the emergency coordinator for the facility shall immediately identify the character, exact source, amount, and area extent of any released materials.
51. At the time of the June 25-26, 2009 CEI, Respondent failed to immediately identify the character, exact source, amount, and area extent of the released materials described in Paragraphs 46 and 47, above.
52. Respondent's acts and/or omissions as alleged in Paragraphs 46 and 47, above, constitute violations of COMAR 26.13.05.04G(2).

COUNT V

(Failure to Maintain Containers of Hazardous Waste in Good Condition During Storage)

53. The allegations of Paragraphs 1 through 52, above, are incorporated herein by reference as though fully set forth at length.

54. COMAR 26.13.05.09(B), provides, in pertinent part, that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from such container to a container that is in good condition.
55. At the time of the June 25-26, 2009 CEI, Respondent had waste paint related materials containing either D001, D035, F003, and F005 hazardous wastes in either damaged or leaking containers in storage in the following areas at the Facility: A leaking 55-gallon satellite container located in the BOP Packaging Area of Building K; forty-four (44) damaged 55 gallon drums located on the East Drum Pad; one of which was actively leaking its contents; one (1) 55-gallon container in the less than 90-day storage area at the Facility was damaged and the contents of the container were visible; and a 55-gallon satellite accumulation container located in the BOP Resin Loading Area at the Facility was weathered and severely rusted from being stored outside.
56. Respondent's acts and/or omissions as alleged in Paragraph 55, above, constitute violations of COMAR 26.13.05.09(B).

COUNT VI

(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. COMAR 26.13.05.09(D), provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.
59. At the time of the June 25-26, 2009 CEI, Respondent had in storage on the East Drum Pad at the Facility a 275-gallon tote and a 55-gallon drum holding waste paint related materials containing D001, F003 and/or F005 hazardous wastes that were open at a time when it was not necessary to add or remove hazardous waste from such containers.
60. At the time of the June 25-26, 2009 CEI, Respondent had in storage in the Tank Farm E Loading Area at the Facility two (2) 5-gallon pails and a 55-gallon drum holding waste resin related materials containing D001, F003, and F005 hazardous wastes that were open at a time when it was not necessary to add or remove hazardous waste from such containers.
61. Respondent's acts and/or omissions as alleged in Paragraphs 59 and 60, above, constitute violations of COMAR 26.13.05.09(D).

COUNT VII

(Failure to Perform Weekly Inspections of Storage Areas)

62. The allegations of Paragraphs 1 through 61, above, are incorporated herein by reference as though fully set forth at length.
63. COMAR 26.13.05.09(E), provides, in pertinent part, that the owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers.
64. From at least October 8, 2008 until June 25, 2009, Respondent failed to inspect the East Drum Pad and the Tank Farm E Loading Area at the Facility, areas where hazardous waste containers are stored at the Facility, at least weekly, looking for leaks and for deterioration of containers.
65. Respondent's acts and/or omissions as alleged in Paragraph 64, above, constitute violations of COMAR 26.13.05.09(E).

COUNT VIII

(Failure to Document Daily Inspections of Hazardous Waste Tanks)

66. The allegations of Paragraphs 1 through 65, above, are incorporated herein by reference as though fully set forth at length.
67. COMAR §§ 26.13.05.10D(2)(c) and 26.13.05.10.D(2)(d), provides, in pertinent part, that the owner or operator shall inspect at least once each operating day the above-ground portions of tank systems to detect corrosion or releases of waste, and the construction materials of, and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.
68. At the time of the June 25-26, 2009 CEI, Respondent failed to inspect at least once each operating day the above-ground portions of the tank systems for Tanks E107 and E108 at the Facility to detect corrosion or releases of waste, and the construction materials of, and the area immediately surrounding the externally accessible portion of such tank systems, including the secondary containment system, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.
69. Respondent's acts and/or omissions as alleged in Paragraph 68, above, constitute violations of COMAR 26.13.05.10D(2)(c).

COUNT IX

(Failure to Mark Each Piece of Equipment Subject to Subpart BB)

70. The allegations of Paragraphs 1 through 69, above, are incorporated herein by reference as though fully set forth at length.

71. 40 C.F.R. § 264.1050 provides the “Applicability” requirements of Subpart BB, 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.”
72. 40 C.F.R. § 264.1051 sets forth the “Definitions”, 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”
73. From January 1, 2007 through June 26, 2009, Respondent engaged in the storage of hazardous waste with an organic concentration of at least 10 percent by weight in the “Bulk Hazardous Waste System” (hereinafter referred to as “BHWS”) which consists of hard piping, equipment and two 10,000 gallon tanks, to transfer and accumulate solvent-based hazardous waste from (1) the BOP Process Areas to Tank E108, (2) the distillation unit to Tank E107, (3) Tank E107 to the Tank Farm E Tanker Truck Loading/Unloading Area, and (4) Tank E108 to the Tank Farm E Tanker Truck Loading/Unloading Area. Such tank 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 Paragraphs 23 through 31, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator that are required pursuant to COMAR 26.13.03.05E(1).
74. At all times relevant to this CAFO, the BHWS tank systems included pumps, 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.

75. At the time of the June 25-26, 2009 CEI, the equipment (*i.e.*, the pump, valves, flanges and/or other connectors) associated with the BHWS tank systems were not marked in such a manner to be distinguished readily from other pieces of equipment.
76. Respondent violated 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 BHWS tank systems that were 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 X - A

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

77. The allegations of Paragraphs 1 through 76 of this CAFO are incorporated herein by reference as though fully set forth at length.
78. 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, provide, in pertinent part, the following:
 - 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."
79. 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, 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. . . .”
80. At all times relevant to the allegations in this CAFO, the BHWS tank systems included pumps in light liquid service, within the meaning and definition of 40 C.F.R. § 264.1051, 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.
81. From January 1, 2007 through July 3, 2009, the pumps in light liquid service associated with the BHWS 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 each pump seal” by the Respondent in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(2).
82. Respondent violated 40 C.F.R. § 264.1052(a)(1) and (2), by failing to monitor the pumps in light liquid service associated with the BHWS tank systems at the Facility monthly, by the methods specified in 40 C.F.R. § 264.1063, to detect leaks and to check each pump by visual inspection each calendar week for indications of liquid dripping from each pump seal.

COUNT X -B

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

83. The allegations of Paragraphs 1 through 82 of this CAFO are incorporated herein by reference as though fully set forth at length.
84. 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, the following:
- 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). . . .”

85. 40 C.F.R. § 264.1061(a) 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 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);
86. 40 C.F.R. § 264.1062(a) 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).
87. From January 1, 2007 through July 3, 2009, each of the valves in light liquid service associated with the BHWS 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).
88. Respondent violated 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 BHWS tank systems at the Facility.

COUNT X-C

***(Failure to Comply with Air Emission Standards for
Pressure Relief Devices in Gas/Vapor Service)***

89. The allegations of Paragraphs 1 through 88 of this CAFO are incorporated herein by reference as though fully set forth at length.
90. 40 C.F.R. § 264.1054(a), provides, in pertinent part, that each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 parts per million ("ppm") above background.
91. 40 C.F.R. § 264.1054(b)(1), provides, in pertinent part, that after each pressure release, the pressure release device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release.
92. 40 C.F.R. § 264.1054(b)(2), provides, in pertinent part, that no later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background.

93. From January 1, 2007 through July 3, 2009, the pressure relief devices in gas/vapor service located on Respondent's BHWS tank systems were not operated with no detectable emissions as indicated by an instrument reading of less than 500 parts per million ("ppm") above background, as required by 40 C.F.R. § 264.1054(a).
94. From January 1, 2007 through July 3, 2009, Respondent failed to monitor the pressure relief devices located on Respondent's BHWS tank systems no later than 5 calendar days after each pressure release to confirm the condition of no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as required by 40 C.F.R. § 264.1054(b)(2).
95. Based on the activities described in Paragraphs 93 and 94 of this CAFO, above, Respondent violated 40 C.F.R. §§ 264.1054(a), and (b)(2).

COUNT XII

(Failure to Comply with Air Emission Standards (for Equipment Leaks) Recordkeeping Requirements)

96. The allegations of paragraphs 1 through 95 of this CAFO are incorporated herein by reference as though fully set forth at length.
97. The "Recordkeeping requirements" of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1064, provide, in pertinent part, the following:
 - a. 40 C.F.R. § 265.1064(g) provides that the following information pertaining to all equipment subject to the requirements in 40 C.F.R. §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record:
 - (2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 264.1052(e), 264.1053(i), and 264.1057(f). (ii) The designation of this equipment as subject to the requirements of §§ 264.1052(e), 264.1053(i), or 264.1057(f) shall be signed by the owner or operator. (3) A list of equipment identification numbers for pressure relief devices required to comply with § 264.1054(a)."
98. At the time of the June 25-26, 2009 CEI, the Facility's operating record did not contain or include a log with any of the information identified in the preceding paragraph, for the pumps, valves and pressure relief devices associated with the BHWS tank systems at the Facility, as required pursuant to 40 C.F.R. §§ 264.1064(g)(2)(i) and (ii), and 264.1064(g)(3).
99. Respondent violated 40 C.F.R. §§ 264.1064(g)(2)(i) and (ii), and 264.1064(g)(3), by failing to record in the Facility operating record, or in any log maintained therein, the

information identified in Paragraphs 97 and 98, above, for the pumps, valves in light liquid service, and for the pressure relief devices in gas/vapor service associated with the BHWS tank systems at the Facility.

COUNT XIII

***(Failure to Comply with Air Emission Standard
Recordkeeping Requirements for Tanks)***

100. The allegations of paragraphs 1 through 99 of this CAFO are incorporated herein by reference as though fully set forth at length.
101. 40 C.F.R. Part 264, Subpart CC, entitled “Air Emission Standards for Tanks, Surface Impoundments, and Containers”, provides, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1080(a) provides, with exceptions not herein applicable, that the requirements of 40 C.F.R. Part 264, Subpart CC, “apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this [40 C.F.R.] part [264]. . .”.
 - b. 40 C.F.R. § 264.1082(b) provides, in relevant part and with exceptions not herein applicable, that “[t]he owner or operator shall control air pollution emissions from each hazardous waste management unit in accordance with the standards specified in [40 C.F.R.] §§ 264.1084 through 264.1087 . . . as applicable to the management of the hazardous waste management unit.”
 - c. 40 C.F.R. § 264.1084(b)(1) provides, in relevant part, that for a tank which meets all of the conditions specified in 40 C.F.R. § 264.1084(b)(1)(i) through (iii), “the owner or operator shall control air pollution emissions from the tank in accordance with the Tank Level 1 controls specified in [40 C.F.R. § 264.1084(c)]. . . .”
 - d. 40 C.F.R. § 264.1084(c) provides that “[o]wners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of [40 C.F.R. § 264.1084].” 40 C.F.R. § 264.1084(c)(4) thereafter provides, in relevant part, that: “[t]he owner or operator shall inspect the air emission control equipment in accordance with the following requirements. (i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. . . . (ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year. . . . (iii) In the event that a defect is detected, the owner or operator shall repair the defect . . . (iv) The

owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.”

- e. 40 C.F.R. § 264.1089(b) provides, in relevant part, that: “[t]he owner or operator of a tank using air emission controls in accordance with the requirements of § 264.1084 of this [Part 264] subpart [CC] shall prepare and maintain records for the tank”, which information includes, but is not limited to: “(ii) A record for each inspection required by [40 C.F.R.] § 264.1084 of this subpart . . .”.
102. At all times relevant to the allegations in this CAFO, the tanks, E107 and E108, at the Facility were equipped with a fixed roof and closure devices, met all of the conditions specified in 40 C.F.R. § 264.1084(b)(1)(i) through (iii), were using Tank Level 1 controls, and were subject to, and not otherwise excepted from, Tank Level 1 air emission control requirements of 40 C.F.R. Part 264, Subpart CC, including the requirements set forth at 40 C.F.R. §§ 264.1083(b), 264.1084(b)(1) and (c)(4), and the associated recordkeeping requirements of 40 C.F.R. § 264.1089(b), as identified and set forth in the preceding paragraph.
103. From January 1, 2008 through July 3, 2009, Respondent did not prepare and did not maintain records of the initial and annual tank fixed roof and closure device emission control visual inspections required pursuant to 40 C.F.R. §§ 264.1084(c)(4) and 264.1089(b)(1)(ii).
104. Respondent violated 40 C.F.R. § 264.1089(b)(1)(ii), by failing to prepare and maintain records of the initial and annual fixed roof and closure device emission control visual inspections for tanks E107 and E108 at the Facility.

IV. CIVIL PENALTY

105. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of **FIVE HUNDRED SEVENTY THOUSAND DOLLARS** (\$570,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this Consent Agreement and Final Order fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and Final Order, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
106. 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.

107. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO 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).
108. 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.
109. A late payment penalty of six percent 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).
110. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), with specific reference to EPA's *RCRA Civil Penalty Policy* (June 2003) ("*Penalty Policy*").
111. a. All payments made by check and sent by U.S Postal Service regular mail shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The customer service contact for this address may be reached at 513-487-2105

- b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section c, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

- c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

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

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

f. On-line payment option

WWW.PAY.GOV

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

g. Additional payment guidance is available at:

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

112. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2011-0257).
113. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

114. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

V. CERTIFICATIONS

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

VI. OTHER APPLICABLE LAWS

116. 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

117. 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

118. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA. There are no compliance or remediation tasks specified in this CAFO.

IX. PARTIES BOUND

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

X. EFFECTIVE DATE

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

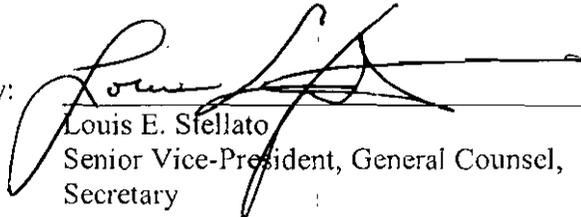
XI. ENTIRE AGREEMENT

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

For Respondent: Sherwin-Williams Company

Date: Sept. 13, 2011

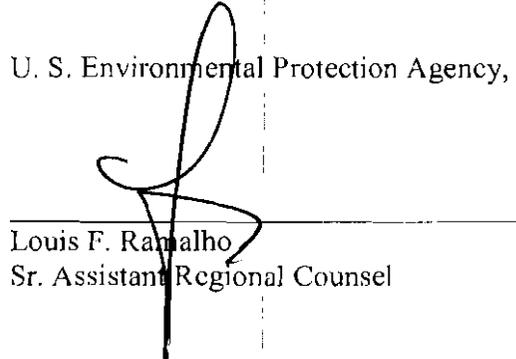
By:


Louis E. Stellato
Senior Vice-President, General Counsel,
Secretary

For Complainant: U. S. Environmental Protection Agency, Region III

SEP 14 2011

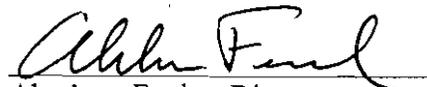
By:


Louis F. Ramalho
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

9/19/11
Date

By:


Abraham Ferdas, Director
Land and Chemicals Division

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

RECEIVED
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REGIONAL TRAINING CENTER
EPA REGION III PHILADELPHIA, PA

In Re:)
)
Sherwin-Williams Company)
101 W. Prospect Avenue) Docket No. RCRA-03-2011-0257
Cleveland, OH 44115)
)
RESPONDENT,) Proceeding Under Section
) 3008(a) and (g) of the
Sherwin-Williams Company) Resource Conservation and
2325 Hollins Ferry Road) Recovery Act, as amended,
Baltimore, Mryland) 42 U.S.C. § 6928(a) and (g)
EPA ID. #MDD000215160)
)
FACILITY.)

FINAL ORDER

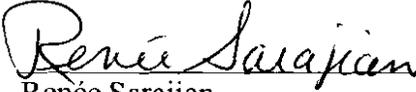
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Sherwin-Williams Company, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6928(a) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FIVE HUNDRED SEVENTY THOUSAND DOLLARS (\$570,000.00)** in accordance with the terms and conditions of the Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/21/11


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

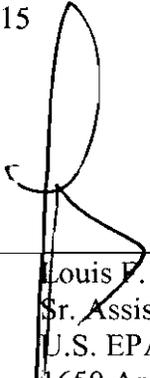
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2011-0257, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Michael S. McMahon, Esq.
McMahon DeGulis llp
The Caxton Building
Suite 650
812 Huron Road
Cleveland, OH 44115

Date:

9/21/2011



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RECEIVED
EPA REGION III, PHILA, PA

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