UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

In the Matter of:	)	
	)	
Agility Cylinders, LLC	)	
	)	
Respondent	)	**Docket No. RCRA-07-2024-0129**
	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 ("Complainant") and Agility Cylinders, LLC ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

3. Respondent is Agility Cylinders, LLC, a company authorized to operate under the laws of Nebraska.

Statutory and Regulatory Framework

4. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6912, 6922, 6924, and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 239 through 282.

6. Section 2002 of RCRA, 42 U.S.C. § 6912, authorizes the Administrator to prescribe such regulations as are necessary to carry out his functions under RCRA.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator to promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines "person" as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines "facility" to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines "treatment" as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so

as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. The regulation at 40 C.F.R. § 260.10 defines "storage" as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. The regulation at 40 C.F.R. § 260.10 defines "disposal" as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. "Solid waste" is defined at 40 C.F.R § 261.2.

16. "Hazardous waste" is defined at 40 C.F.R. § 261.3.

17. The regulation at 40 C.F.R. § 260.10 defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

18. The regulation at 40 C.F.R. § 260.10 defines "small quantity generator" as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

19. The regulation at 40 C.F.R. § 260.10 defines "large quantity generator" as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

20. The regulation at 40 C.F.R. § 260.10 defines "lamp," also referred to as "universal waste lamp," as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

21. The regulation at 40 C.F.R. § 260.10 defines "manifest" as the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of parts 262 through 265 of this chapter.

22. The regulation at 40 C.F.R. § 260.10 defines "solvent-contaminated wipe means (1) A wipe that, after use or after cleaning up a spill, either: (i) Contains one or more of the F001 through F005 solvents listed in 40 C.F.R. 261.31 or the corresponding P- or U- listed solvents found in 40 C.F.R. 261.33; (ii) Exhibits a hazardous characteristic found in 40 C.F.R. part 261

subpart C when that characteristic results from a solvent listed in 40 C.F.R. part 261; and/or (iii) Exhibits only the hazardous waste characteristic of ignitability found in 40 C.F.R. 261.21 due to the presence of one or more solvents that are not listed in 40 C.F.R. part 261. (2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 C.F.R. 261.4(a)(26) and 40 C.F.R. 261.4(b)(18).

23. The regulation at 40 C.F.R. § 260.10 defines "universal waste" as any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter: (1) Batteries as described in § 273.2 of this chapter; (2) Pesticides as described in § 273.3 of this chapter; (3) Mercury-containing equipment as described in § 273.4 of this chapter; (4) Lamps as described in § 273.5 of this chapter; and (5) Aerosol cans as described in § 273.6 of this chapter.

24. The regulation at 40 C.F.R. § 260.10 defines "used oil" as any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

25. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management (hereinafter "128 N.A.C."). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

26. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than $25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $37,500 for violations that occurred before November 2, 2015, and to $121,275 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

27. Respondent is a company and authorized to conduct business within the State of Nebraska. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

28. Respondent owns and operates a facility located at three addresses in Lincoln, Nebraska: 5117 NW 40th St, Lincoln, Nebraska; 5020 West 39th St., Lincoln, Nebraska; and 5150 NW 40th St., Lincoln, Nebraska. Agility Cylinders manufactures two types of TUFFSHELL® cylinders: a cylinder with a lightweight carbon fiber and glass wrap; and a lighter weight all carbon fiber wrapped cylinder. Respondent employs approximately 350 people at its Lincoln, Nebraska, facility.

29. On or about July 25-26, 2023, inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter "the inspection") of the hazardous waste management practices at Respondent's facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a generator of used oil, and a Small Quantity Handler of universal waste.

30. On or about August 18, 2016, Respondent notified the EPA of its regulated waste activity as a Large Quantity Generator (LQG) and obtained RCRA ID number NER000512582 for its facility located at 5150 NW 40th Street, Lincoln, Nebraska ("5150 Building").

31. On or about February 8, 2016, Respondent notified the EPA of its regulated waste activity as an LQG and obtained RCRA ID number NER000506261 for its facility located at 5117 NW 40th Street, Lincoln, Nebraska ("5117 Building").

32. At the time of the inspection of the 5150 Building and the 5117 Building, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3:

(a) Waste paint related material, which contains D001, D035, F002, F003, and F005 hazardous waste;
(b) Solvent contaminated waste solids, which contains D001 and F003 hazardous waste;
(c) Waste resin, which is nonhazardous waste;
(d) Waste paint filters, which is nonhazardous waste;
(e) Electronic waste, which is nonhazardous waste;
(f) Still bottoms which is nonhazardous waste; and
(g) General trash which is nonhazardous waste.

33. At the time of the inspection, the following used oil container was present:
(a) One 325-gallon container of used oil from repair and maintenance of air compressors.

34. At the time of the inspection, the following universal waste was present:

(a) One 55-gallon container of waste batteries; and
(b) One 6-foot container and one 8-foot container of waste lamps.

Violations

35. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

36. Complainant hereby incorporates the allegations contained in Paragraphs 27 through 34 above, as if fully set forth herein.

37. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statute 81-1505(13), and the regulations at 40 C.F.R. Part 270 and 128 N.A.C. ch. 12 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

38. At the time of the inspection, Respondent did not have a permit or interim status.

Generator Requirements

Accumulating hazardous waste longer than 90 days

39. The regulations at 128 N.A.C. ch. 10 § 004,01 state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the conditions in 128 N.A.C. ch. 10 § 004,01 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time.

40. At the time of the inspection, Respondent had accumulated the following hazardous waste for longer than 90 days: a 55-gallon container in the acetone still central accumulation area of used personal protective equipment managed as hazardous solvent contaminated waste solids. The container was labeled with an accumulation start date of 3/1/2023.

Failure to close central accumulation containers

41. The regulations at 128 N.A.C. ch. 10 § 004,01A2 state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, inter alia, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

42. At the time of the inspection, Respondent failed to close a yellow 55-gallon container of personal protective equipment ("PPE") and debris in the acetone still central accumulation area.

Failure to conduct weekly inspections of central accumulation areas ("CAAs")

43. The regulations at 128 N.A.C. ch. 10 § 004,01A4 state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, inter alia, the generator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion and other factors.

44. At the time of the inspection, Respondent failed to conduct weekly inspections of central accumulation areas, dating back to January 2022.

Failure to mark CAA containers with an accumulation start date

45. The regulations at 128 N.A.C. ch. 10 § 004,01F state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, inter alia, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

46. At the time of the inspection, Respondent failed to mark the following containers in the two central accumulation areas with an accumulation start date:

(a) One yellow 55-gallon container in the acetone still area CAA; accumulating used PPE;
(b) One blue 55-gallon container in the acetone still area CAA accumulating used PPE managed as hazardous solvent contaminated waste solids;
(c) Two green 55-gallon containers in the hazardous waste shed CAA;
(d) One black 55-gallon container in the hazardous waste shed CAA; and
(e) Fifteen 5-gallon containers in the hazardous waste shed CAA.

Failure to label central accumulation area containers as "Hazardous Waste"

47. The regulations at 128 N.A.C. ch. 10 § 004,01G state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, inter alia, while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste."

48. At the time of the inspection, Respondent failed to mark the following containers with the words "Hazardous Waste":

(a) One 55-gallon open and unlabeled container of used PPE in the acetone still area CAA;
(b) One black 55-gallon container in the hazardous waste shed CAA; and
(c) Fifteen 5-gallon containers in the hazardous waste shed CAA.

Failure to close satellite accumulation area ("SAA") containers

49. The regulations at 128 N.A.C. ch. 10 § 005,01A state 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 Section 004,01 of this Chapter provided the generator, inter alia, complies with Sections 004,01A1 and 004,01A2. of this Chapter and Chapter 16, 002,01C.

50. The regulations at 128 N.A.C. ch. 10 § 004,01A2 state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, inter alia, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

51. At the time of the inspection, Respondent failed to close the following SAA containers:

(a) One 55-gallon container of spent methyl ethyl ketone in the paint kitchen had a metal funnel that would not close;
(b) Two open 5-gallon containers of spent paint and solvent were in the paint kitchen; and
(c) One 55-gallon container of spent methyl ethyl ketone in the paint kitchen with a metal funnel that did not close and a missing bung.

Failure to label SAA containers properly

52. The regulations at 128 N.A.C. ch. 10 § 005,01B state 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 Section 004.01 of this Chapter provided the generator, inter alia, marks the containers with the words "Hazardous Waste" or with other words that identify the contents of the containers.

53. At the time of the inspection, Respondent failed to mark the following SAA containers with the words "Hazardous Waste" or with other words that identify the contents of the containers:

(a) One 15-gallon container in acetone still area containing solvent-contaminated wipes;
(b) One 55-gallon container accumulating residuals from punctured aerosol cans;
(c) Two 5-gallon containers in the paint kitchen containing spent paint and solvent;
(d) One 55-gallon container accumulating residuals from punctured aerosol cans; and
(e) One 5-gallon container accumulating hazardous waste solvent rags and PPE.

Failure to update list of emergency coordinators

54. The regulations at 128 N.A.C. ch. 18 § 003,04 state that a Contingency Plan must list names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates.

55. At the time of the inspection, Respondent failed to keep the list of emergency coordinators in its Contingency Plan up to date.

Failure to amend Contingency Plan

56. The regulations at 128 N.A.C. ch. 18 § 003,05 state that a Contingency Plan must include a list of all emergency equipment at the site (such as fire extinguishing systems, spill control equipment, communications, and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

57. At the time of the inspection, Respondent failed to amend the Contingency Plan when the site changes in design or operations and the list of equipment changed.

58. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 36 through 57 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Neb. Rev. Stat. 81-1505(13) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 2

Failure to Comply with Universal Waste Management Requirements

59. Complainant hereby incorporates the allegations contained in Paragraphs 27 through 34 above, as if fully set forth herein.

Failure to close universal waste containers

60. The regulations at 128 N.A.C. ch. 25 § 012,04A state that a small quantity handler of universal waste must manage universal waste batteries in a way that prevents release of any universal waste or component of a universal waste to the environment, including containing 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.

61. At the time of the inspection, Respondent failed to close the following containers or packages to prevent releases and breakage: one 8-foot container of universal waste lamps.

62. Respondent's failure to close the universal waste containers or packages described above to prevent releases and breakage is a violation of 128 N.A.C. ch. 25 § 012,04A.

Failure to label universal waste containers

63. The regulations at 128 N.A.C. ch. 25 § 013,05 state that universal waste lamps, i.e., each lamp, or a container in which the lamps are contained, must be labeled, or marked clearly with any one of the following phrases: "Universal Waste—Lamps" or "Waste Lamps" or "Used Lamps."

64. At the time of the inspection, Respondent failed to label with the words "Universal Waste—Lamps" or "Waste Lamps" or "Used Lamps" the following: one 8-foot container of universal waste lamps.

65. Respondent's failure to label containers of universal waste lamps with the words "Universal Waste—Lamps" or "Waste Lamps" or "Used Lamps" is a violation of 128 N.A.C. ch. 25 § 013,05.

Accumulation of universal waste for longer than one year

66. The regulations at 128 N.A.C. ch. 25 § 014,01 state that 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.

67. At the time of the inspection, Respondent accumulated universal waste in the following container longer than one year: one 6-foot container of universal waste lamps, dated "12/30/2021."

68. Respondent's accumulation of the universal waste lamps described above for longer than one year is a violation of 128 N.A.C. ch. 25 § 014,01.

Failure to date universal waste containers

69. The regulations at 128 N.A.C. ch. 25 § 014,03 state that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

70. At the time of the inspection, Respondent failed to label the following containers with the earliest date that any universal waste in the container became a waste or was received: one 8-foot container of universal waste lamps.

71. Respondent's failure to label the universal waste containers described above with the earliest date that any universal waste in the container became a waste or was received is a violation of 128 N.A.C. ch. 25 § 014,03.

Count 3

Failure to Properly Label Used Oil Containers

72. Complainant hereby incorporates the allegations contained in Paragraphs 27 through 34 above, as if fully set forth herein.

73. The regulations at 128 N.A.C. ch. 7 § 009.04A3 state that for used oil generators, containers, and aboveground tanks with a volume of 25 gallons or greater must be labeled or marked clearly with the words "Used Oil."

74. At the time of the inspection, Respondent failed to properly label or clearly mark the following used oil containers: two 55-gallon containers of used oil labeled "Waste Oil."

75. Respondent's failure to properly label the containers of used oil described above is a violation of 128 N.A.C. ch. 7 § 009.04A3.

Count 4

Failure to Maintain Hazardous Waste Shipping Documentation

76. Complainant hereby incorporates the allegations contained in Paragraphs 27 through 34 above, as if fully set forth herein.

Failure to retain signed manifests

77. The regulations at 128 N.A.C. ch. 10 § 002.10 state that the generator shall retain the signed copies of the manifests received from the owners or operators of the storage, treatment, or disposal facilities until three years after the date of shipment of the hazardous waste.

78. At the time of the inspection, more than 20 manifests did not have the signed copy returned from the TSDF acknowledging receipt.

79. Respondent's failure to retain signed copies of the manifests is a violation of 128 N.A.C. ch. 10 § 002.10.

Failure to submit and retain one-time land disposal written notice

80. The regulations at 128 N.A.C. ch. 20 § 005.01B state that, for a generator of hazardous waste, if the hazardous waste or contaminated soil does not meet the treatment standard, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file.

81. At the time of the inspection, Respondent was unable to locate or produce one-time written notices to each treatment or storage facility receiving the waste.

82. Respondent's failure to retain a copy of one-time written notices described above is a violation of 128 N.A.C. ch. 20 § 005.01B.

CONSENT AGREEMENT

83. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits the jurisdictional allegations set forth herein;

(b) neither admits nor denies the specific factual allegations stated herein;

(c) consents to the assessment of a civil penalty, as stated herein;

(d) consents to the issuance of any specified compliance or corrective action order;

(e) consents to any conditions specified herein;

(f) consents to any stated Permit Action;

(g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

84. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

85. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein, performance of the compliance actions described below, and to completion of the SEP described below.

86. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

87. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

88. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *bryan.mewhort@hexagonagility.com.*

Penalty Payment

89. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Three Thousand, Two Hundred and Sixty Dollars ($33,260), as set forth below.

90. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at *http://www.epa.gov/financial/makepayment.*

91. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Katherine Kacsur, Attorney
kacsur.katherine@epa.gov.

92. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

93. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26

U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent's TIN within 5 days of Respondent's issuance and receipt of the TIN.

Supplemental Environmental Project

94. In response to the alleged violations of RCRA and in settlement of this matter, although not required by RCRA or any other federal, state or local law, Respondent agrees to implement the supplemental environmental project (SEP) described below in paragraphs 95-102, which the parties agree is intended to secure significant environmental or public health protection and improvement.

95. Respondent shall complete the following pollution reduction and prevention SEP:

(a) Purchase and install an acetone still for the building located at 5150 NW 40th St., Lincoln, Nebraska, to recycle and reclaim all of the acetone utilized in this building. Previously, acetone constituted approximately 25% of the overall liquid hazardous waste generated in this building. Installing an acetone still will reduce the overall hazardous waste produced from approximately 750 pounds to 600 pounds per month.

(b) Replace the use of methylene chloride to clean parts in the building located at 5117 NW 40th St., Lincoln, Nebraska, with a parts washer that produces non-hazardous waste. Previously, this building used a methylene chloride mixture in the Bay B Central Cleaning Area for treating parts prior to an acetone clean, which was disposed of as hazardous waste. Eliminating the use of methylene chloride will reduce the overall hazardous waste produced by approximately 50 pounds per month.

96. Respondent shall spend no less than $403,924 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

97. Respondent shall complete the SEP within 180 days of the effective date of this CAFO.

98. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015). The SEP advances at least one of the objectives of RCRA by reducing the amount of hazardous waste produced at Respondent's Lincoln, Nebraska facilities. The SEP is not inconsistent with any provision of RCRA. The SEP relates to the alleged violations, and is designed to reduce:

(a) The likelihood that similar hazardous waste-related violations will occur in the future by reducing the amount of acetone transported off-site as hazardous waste and eliminating a methylene chloride waste stream; and
(b) The overall risk to public health and/or the environment potentially affected by the alleged violations by eliminating a use of methylene chloride, a listed hazardous waste under RCRA, and reducing the amount of acetone hazardous waste generated.

99. Respondent certifies the truth and accuracy of each of the following:

(a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is $403,924;
(b) That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
(c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
(d) That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
(e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
(f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
(g) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 95.

100. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

101. SEP Reports.

(a) Respondent shall submit a SEP Completion Report to EPA within 210 days of the effective date of this CAFO. The SEP Completion Report shall contain the following information, with supporting documentation:
   i. A detailed description of the SEP as implemented;
   ii. A description of any installation and operating problems encountered and the solutions thereto;
   iii. Itemized costs;
   iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
   v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

(b) Respondent agrees that failure to submit the SEP Completion Report required by subsection (a) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 103 below.

(c) Respondent shall submit all notices and reports required by this CAFO to Edwin Buckner at *buckner.edwin@epa.gov*.

(d) In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

102. EPA Acceptance of SEP Report.

(a) After receipt of the SEP Completion Report described in Paragraph 101 above, EPA will, in writing to the Respondent, either:
   i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
   ii. Indicate that EPA concludes that the project has been completed satisfactorily; or

iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 103 herein.

(b) If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

103. Stipulated Penalties.

(a) Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in this Section by the deadline in Paragraph 95, Respondent agrees to pay the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:
   i. $250 per day for days 1-30;
   ii. $300 per day for days 31 – 60; and
   iii. $500 per day for days 61 and above.

(b) If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 101, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
   i. $100 per day for days 1-30;
   ii. $150 per day for days 31 – 60; and
   iii. $300 per day for days 61 and above.

(c) If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 95 above, Respondent shall pay a stipulated penalty to the United States in the amount of $444,316. "Satisfactory completion" of the SEP is defined as Respondent spending no less than $403,924 to (1) purchase and installation of an acetone still for the building located at 5150 NW 40th St., Lincoln, Nebraska, to allow for recycling of acetone, and (2) replacing the use of methylene chloride to clean parts in the building located at 5117 NW 40th St., Lincoln, Nebraska, with a parts washer that produces non-hazardous waste by 180 days from the effective date of this CAFO. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

(d) EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
(e) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 91 above. Interest and late charges shall be paid as stated in paragraph 92.

104. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described above. The appropriate EPA manager shall have the authority to extend the deadlines for good cause.

Effect of Settlement and Reservation of Rights

105. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

106. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

107. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

108. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

109. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Seventy-Three Thousand Forty-Five Dollars ($73,045) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

110. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation,

storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

111. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

112. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

113. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

114. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

115. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

116. Tax Identification. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the provisions found in Section above titled Supplemental Environmental Projects; and the $33,260 paid pursuant to Paragraphs 88 and 89 is restitution, remediation, or otherwise required to come into compliance with the law.

117. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

118. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

119. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

DAVID COZAD Digitally signed by DAVID COZAD
Date: 2024.12.18 15:26:03 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

KATHERINE KACSUR Digitally signed by KATHERINE KACSUR
Date: 2024.12.19 07:41:54 -06'00'

Katherine Kacsur
Office of Regional Counsel

Date

RESPONDENT:

Agility Cylinders, LLC

Signature

12/17/2024
Date

Bryan Mewhort
Printed Name

V.P. Operations
Title

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), 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.

IT IS SO ORDERED.

KARINA BORROMEO
Digitally signed by KARINA BORROMEO
Date: 2025.01.07 11:38:57 -06'00'

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Katherine Kacsur
Office of Regional Counsel
kacsur.katherinet@epa.gov

Ed Buckner
Enforcement and Compliance Assurance Division
buckner.edwin@epa.gov

Carrie Venerable - *Affiliate*
Office of Regional Counsel
Venerable.Carrie@epa.gov

Copy via Email to Respondent:

Bryan Mewhort
Vice President, Operations, Lincoln, Nebraska
bryan.mewhort@hexagonagility.com

Copy via Email to the State of Nebraska:

Nebraska Electronic Docket (e-copy)
ndeq.epainspections@nebraska.gov

David Haldeman, Administrator (e-copy)
Waste Management Division
Nebraska Department of Environment and Energy
david.haldeman@nebraska.gov

Jeff Edwards (e-copy)
Nebraska Department of Environment and Energy
jeffery.edwards@nebraska.gov

Dated this _____ day of _____, _____.

AMY GONZALES Digitally signed by AMY GONZALES
Date: 2025.01.08 08:10:26 -06'00'

Signed