

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Plaskolite Tennessee, LLC
2609 Fite Road
Memphis, Tennessee 38127
EPA ID No.: TNR000043653

Respondent.

Docket No. RCRA-04-2023-2102(b)

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

CONSENT AGREEMENT**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent's admission of violation or adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.

5. Respondent is Plaskolite Tennessee, LLC, a limited liability company doing business in the State of Tennessee. This proceeding pertains to Respondent's facility located at 2609 Fife Road, Memphis, Tennessee 38127 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Tennessee (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Tennessee Hazardous Waste Management Act of 1977 (THWMA), Tenn. Code Ann. §§ 68-212-101 *et seq.* and at Tenn. Comp. R. & Regs. 0400-12-01-.01 through 0400-12-01-.12.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 68-212-107(d) of the THWMA, Tenn. Code Ann. § 68-212-107(d) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at Tenn. Comp. R. & Regs. 0400-12-01-.03 [40 C.F.R. Part 262¹].
12. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
13. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii) [40 C.F.R. § 261.3(a)(2)], and is not otherwise excluded from regulation as a hazardous waste by Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(d)2. [40 C.F.R. § 261.4(b)].

¹ At the time of the inspection, Tennessee had updated its hazardous waste regulations to include the amendments made by the federal Generator Improvements Rule, 81 Fed. Reg. 85,732 (Nov. 28, 2016). The EPA authorized these amendments effective September 12, 2022; however, because Tennessee had not yet been authorized by the EPA for these amendments as of the time of the inspection, the citations included below are to the previously authorized State generator regulations, effective as of January 2018.

14. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(I) and 0400-12-01-.02(3)(a) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(b)-(e) [40 C.F.R. §§ 261.21-24], are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
15. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and (b) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
16. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(II) and 0400-12-01-.02(4)(a) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in Tenn. Comp. R. & Regs. 0400-12-01-.02(4) [40 C.F.R. Part 261, Subpart D].
17. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31].
18. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31], spent non-halogenated solvents including toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures meet the definition of an F005 listed hazardous waste.
19. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Tenn. Comp. R. & Regs. 0400-12-01-.02 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
20. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
21. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “person” includes a corporation.
22. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
23. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
24. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “tank system” is defined as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

25. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “ancillary equipment” is defined as any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.
26. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i) (2018) [40 C.F.R. § 262.34(c)(1) (2016)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the 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 without having interim status, as required by Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2. (2018) [40 C.F.R. § 262.34(a) (2016)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I)-(II) (2018) [40 C.F.R. § 262.34(c)(1)(i)-(ii) (2016)] (hereinafter referred to as the “SAA Permit Exemption”).
27. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I) (2018) [40 C.F.R. § 262.34(c)(1)(i) (2016)], which incorporates Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)1. (2018) [40 C.F.R. § 265.173(a) (2016)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
28. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(II) (2018) [40 C.F.R. § 262.34(c)(1)(ii) (2016)], which is a condition of the SAA Permit Exemption, a generator is required to mark SAA containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
29. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2. (2018) [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(i)-(v) (2018) [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).
30. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iii) (2018) [40 C.F.R. § 262.34(a)(3) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: “Hazardous Waste.”
31. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(ii) (2018) [40 C.F.R. § 262.34(a)(2) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.

32. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.11(3)(c)3. [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”
33. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11].
34. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(5)(c) [40 C.F.R. § 260.42(a)], a facility managing hazardous secondary materials under Tenn. Comp. R. & Regs. 0400-12-01-.01(4)(b), or subpart (1)(d)1(xxiii), (xxiv), (xxv), or (xxvii) of Rule 0400-12-01-.02 [40 C.F.R. §§ 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27)], must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the Department.

IV. FINDINGS OF FACTS

35. Respondent’s Facility is located at 2609 Fite Road, Memphis, Tennessee.
36. Respondent owns and operates an acrylic sheet manufacturing operation at its Facility.
37. Respondent utilizes toluene as a solvent to perform cleaning operations on tanks used at the Facility to manufacture its products.
38. On January 28, 2022, Respondent notified the Tennessee Department of Environment and Conservation (TDEC) as a large quantity generator (LQG) of hazardous waste.
39. On June 30, 2022, the EPA and TDEC conducted a compliance evaluation inspection (CEI) at Respondent’s Facility. The EPA’s findings of the CEI were documented in a report emailed to the Facility on September 22, 2022.
40. At the time of the CEI, the EPA determined that the Respondent was using toluene for the past five years to clean three production tanks at its Facility. Upon using the toluene to clean its production tanks, the Respondent generated spent toluene solvent which was transferred to and accumulated in Respondent’s “solvent hold-up tank.”
41. The spent toluene solvent had a flashpoint of less than 140 degrees Fahrenheit and was a D001 characteristic and a F005 listed hazardous waste, respectively.
42. At the time of the CEI, the Respondent had not made a hazardous waste determination on the spent toluene solvent generated and managed at its Facility in its solvent hold-up tank and ancillary equipment.
43. At the time of the CEI, the Respondent had not filed a notification with TDEC to become a handler of hazardous secondary materials in accordance with Tenn. Comp. R. & Regs. 0400-12-01-.01(5)(c) [40 C.F.R. § 260.42(a)].

44. At the time of the CEI, the inspectors observed that the Facility had failed to mark the following containers of hazardous waste with the words “Hazardous Waste”: four 27-gallon containers within SAAs on the Second Floor Cooler and Hold Tanks Area; one 27- gallon container within a SAA on the First Floor Feed Pump room; one 55-gallon container within a SAA in the Feed Zone Area; one 55-gallon, four 27-gallon and one 3-gallon containers within SAAs in the Color Building; and thirty-four 27-gallon containers within a central accumulation area (CAA).
45. At the time of the CEI, the inspectors observed that the Facility had failed to mark four 55-gallon containers of hazardous waste within the Facility’s CAA with accumulation start dates.
46. At the time of the CEI, the inspectors observed the following open containers of hazardous waste at the Facility: one 27-gallon container within a SAA on the Second Floor Cooler and Hold Tanks Area; one 3-gallon container within a SAA in the Color Building; and one 55-gallon container within a SAA in the Still Bottoms Collection Area.
47. At the time of the CEI, the inspectors observed that the Facility had failed to mark one 55-gallon container of used oil with the words “Used Oil” within the Facility’s CAA.

V. ALLEGED VIOLATIONS

48. Respondent is a “person” as defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
49. Respondent is the “owner/operator” of a “facility” located at 2609 Fite Road, Memphis, Tennessee, as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
50. Respondent is a “generator” of “solid waste” and “hazardous waste” as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10] and Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3].
51. Respondent allegedly failed to determine that the toluene solvent which became spent upon being used for cleaning production tanks at the Facility was a D001 characteristic and F005 listed hazardous waste. The EPA therefore alleges that Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.03(1)(b) [40 C.F.R. § 262.11], by failing to make a hazardous waste determination on solid waste generated at its Facility.
52. Respondent allegedly failed to notify TDEC as a handler of hazardous secondary materials for its management and treatment of spent toluene solvent. The EPA therefore alleges that Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.01(5)(c) [40 C.F.R. § 260.42(a)], by failing to notify to be a handler of hazardous secondary materials prior to operating under the provision.
53. Respondent allegedly failed to mark containers of hazardous waste being accumulated at its Facility with the date accumulation began. The EPA therefore alleges that Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(ii) (2018) [40 C.F.R. § 262.34(a)(2) (2016)].

54. Respondent allegedly failed to label containers of hazardous waste being accumulated at its facility with the words “Hazardous Waste.” The EPA therefore alleges that Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the labeling requirements of Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)2.(iii) (2018) [40 C.F.R. § 262.34(a)(3) (2016)].
55. Respondent allegedly failed to label containers of hazardous waste being accumulated at its facility in SAAs with the words “Hazardous Waste.” The EPA therefore alleges that Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(II) (2018) [40 C.F.R. § 262.34(c)(1)(ii) (2016)].
56. Respondent allegedly failed to keep containers of hazardous waste being accumulated at its Facility in SAAs closed when waste was not being added or removed from the containers. The EPA therefore alleges that Respondent violated Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Tenn. Comp. R. & Regs. 0400-12-01-.03(4)(e)5.(i)(I) (2018) [40 C.F.R. § 262.34(c)(1)(i) (2016)], by not complying with the container management requirements of Tenn. Comp. R. & Regs. 0400-12-01-.05(9)(d)(1) [40 C.F.R. § 265.173(a)].
57. Respondent allegedly failed to label containers of used oil being accumulated at its Facility with the words “Used Oil.” The EPA therefore alleges that Respondent violated Tenn. Comp. R. & Regs. 0400-12-01-.11(3)(c)3. [40 C.F.R. § 279.22(c)(1)], by storing used oil in containers that were not labeled or marked clearly with the words “Used Oil.”

VI. STIPULATIONS

58. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
59. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and

f. waives its rights to appeal the Final Order accompanying this CAFO.

60. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of this CAFO.

61. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.

62. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

63. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FORTY-EIGHT THOUSAND DOLLARS (\$48,000.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.

64. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

- d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-877-372-2457

65. Respondent shall send proof of payment, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Daryl R. Himes

66. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. “RCRA-04-2023-2102(b).”
67. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within thirty (30) days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
68. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;

- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

69. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

- 70. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 71. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
- 72. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
- 73. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
- 74. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
- 75. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
- 76. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
- 77. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

78. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
79. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
80. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
81. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
82. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. the EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
83. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
84. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

85. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement In the Matter of Plaskolite Tennessee, LLC, Docket No. RCRA-04-2023-2102(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Roger Hamilton 3/1/23
Signature Date

Printed Name: ROGER L. HAMILTON

Title: VICE-PRESIDENT OPERATIONS

Address: P.O. BOX 1497, COLUMBUS, OH 43216-1497

The foregoing Consent Agreement In the Matter of Plaskolite Tennessee, LLC, Docket No. **RCRA-04-2023-2102(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Kimberly L. Bingham
Chief
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Plaskolite Tennessee, LLC
2609 Fite Road
Memphis, Tennessee 38127
EPA ID No.: TNR000043653

Respondent.

Docket No. RCRA-04-2023-2102(b)

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

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of Plaskolite Tennessee, LLC, Docket No. RCRA-04-2023-2102(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: David M. Edelstein
 Partner
 Vorys, Sater, Seymour and Pease LLP
 301 East Fourth Street
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 dmedelstein@vorys.com

To EPA: Daryl R. Himes
 Environmental Engineer
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 Joshua K. Lee
 Associate Regional Counsel
 lee.joshua@epa.gov

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 smith.quantindra@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960