

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: John Ruggero
Name of Contact person

~~NOV~~ **NOV 4 2010**
~~NOV~~ **NOV 4 2010**
Date

in the RS ORC
Office

at 215-814-2142
Phone number

Non -SF Jud. Order/Consent
Decree. DOJ COLLECTS

Administrative Order/
Consent Agreement
CFO COLLECTS PAYMENT

SF Jud. Order/Consent
Decree. CFO COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment
Yuasa Battery, Inc.

The Total Dollar Amount of Receivable \$52,360.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2011-0001

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office LCD

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Cincinnati CFO | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 4. Regional Counsel |



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

John Ruggero
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OVERNIGHT DELIVERY

NOV 4 2010

Susan P. LeGros, Esq.
Stevens & Lee
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406

Re: *In the Matter of: Yuasa Battery, Inc.*
EPA Docket No. RCRA-03-2011-0001

RECEIVED
NOV 4 11 21 AM '10
REGIONAL OFFICE
PHILADELPHIA

Dear Ms. LeGros:

Enclosed is a copy of the fully executed Consent Agreement and Final Order ("CAFO"), filed today with the Regional Hearing Clerk, in the above-referenced matter. A copy of the cover memo transmitting the CAFO to the Regional Judicial Officer for signature is also enclosed.

Yuasa Battery, Inc. must ensure that it certifies compliance with the Compliance Order and that the penalty is remitted in accordance with the procedures and deadlines set forth in the CAFO.

The Environmental Protection Agency - Region III frequently issues a press release to announce the filing of a CAFO. If a press release will be issued regarding this CAFO, a copy will be faxed to you or your designee simultaneously with its transmittal to the news wire services. Please send me the contact information for the person who should receive a copy of any press release.

We appreciate the cooperation and time spent by Yuasa's management and you in resolving this matter. Please do not hesitate to contact me if any questions arise.

Sincerely,

John Ruggero
John Ruggero

Enclosures

cc: Mr. Martin Matlin (3LC70)
Regional Hearing Clerk (3RC00)
Ms. Jennifer Keene (CFC)

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

In the Matter of:)
) Docket No. RCRA- 03-2011-0001
Yuasa Battery, Inc.)
2901 Montrose Avenue) CONSENT AGREEMENT
Laureldale, PA 19605)
)
Respondent) Proceeding Under Section 3008(a) and (g)
) of the Resource Conservation and
) Recovery Act, as amended, 42 U.S.C.
EPA ID No. PAD095361655) § 6928(a) and (g)

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Yuasa Battery, Inc. ("Respondent"), pursuant to 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. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO," hereinafter jointly referred to as the "CAFO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 2901 Montrose Avenue, Laureldale, Pennsylvania (the "Facility").
2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted final authorization to the Commonwealth of Pennsylvania to administer its state hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Revised Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by EPA on September 26, 2000 (effective November 27, 2000). Additional PaHWR amendments were authorized by EPA on January 20, 2004 (effective March 22, 2004) and April 29, 2009 (effective June 29, 2009). Through such authorizations, the authorized PaHWR set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA. *See*, 65 Fed. Reg. 57734 (September 26, 2000), 69 Fed. Reg. 2674 (January 20, 2004), and 74 Fed. Reg. 19453 (April 29, 2009).

3. The authorized PaHWR that became effective on November 27, 2000 incorporate by reference certain federal hazardous waste management regulations that were in effect on May 1, 1999. Unless noted otherwise, the factual allegations and legal conclusions in this CAFO are based on the PaHWR authorized on November 27, 2000, which were in effect at the time of the violations alleged herein. The authorized PaHWR that became effective on March 22, 2004 incorporate by reference certain federal hazardous waste management regulations that were adopted between July 7, 1999 and June 28, 2001. The authorized PaHWR that became effective on June 29, 2009 incorporate by reference certain federal hazardous waste management regulations that became effective between September 30, 1999 and October 12, 2005. With one exception, the revisions to the PaHWR that were authorized in 2004 and 2009 are not applicable to the violations set forth herein. The only exception is that the 2004 reauthorization includes the incorporation by reference of 40 C.F.R. § 262.34(a)(4) (2001), which is cited herein. *See*, 69 Fed. Reg. 2674, 2675 (January 20, 2004).
4. Prior to issuing this CAFO, EPA provided notice to the Commonwealth of Pennsylvania, in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA.
6. Except as provided in paragraph 5, Respondent neither admits nor denies the specific factual allegations set forth in this CA.
7. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the FO, or the enforcement of this CAFO.
8. For the purposes of this proceeding, Respondent hereby expressly waives any right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Respondent shall bear its own costs and attorney's fees incurred in connection with this proceeding.

Findings of Fact and Conclusions of Law

11. Complainant has determined that Respondent has violated RCRA, and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and 14(a)(2) and (3).
12. Respondent, Yuasa Battery, Inc., is a corporation organized on or about October 15, 2000 pursuant to the laws of the State of Delaware.
13. Respondent is, and was at the time of the violations alleged herein, a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 25 Pa. Code § 260a.10.

14. Pursuant to 25 Pa. Code § 260a.10, “[f]acility” means, inter alia, “[t]he land, structures and other appurtenances or improvements ... where hazardous waste is treated, stored or disposed.”
15. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “hazardous waste” means “a hazardous waste as defined in [40 C.F.R. § 261.3]”
16. 25 Pa. Code § 261a.1 incorporates by reference 40 C.F.R. § 261.3, which provides, in relevant part:
 - (a) A solid waste, as defined in [40 C.F.R.] § 261.2, is a hazardous waste if:
 - (1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in [40 C.F.R. §§ 261.20-.24]
 - (ii) It is listed in [40 C.F.R. §§ 261.30-.38]
 - ****
 - (iv) It is a mixture of solid waste and one or more hazardous wastes listed in [40 C.F.R. §§ 261.30-.38]
17. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “generator” means “any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.”
18. Operations and generation of hazardous waste at the Facility began in 1978 when an entity other than Respondent owned and operated the Facility.
19. Since at least November 2005, Respondent has generated more than 1,000 kilograms of hazardous waste per month at the Facility.
20. Since at least November 2005, Respondent has been a “generator” at the Facility, as that term is defined in 25 Pa. Code § 260a.1.
21. On September 15, 2009 and September 22, 2009, representatives from EPA Region III inspected Respondent’s Facility to determine its compliance with the hazardous waste management requirements of RCRA Subtitle C and the authorized PaHWR.

COUNT I

(Operating a Facility Without a Permit or Interim Status)

22. The allegations in paragraphs 1 through 21, above, are incorporated herein by reference as though fully set forth at length.
23. RCRA § 3005(a), 42 U.S.C. § 6925(a), in pertinent part, prohibits treatment, storage, and disposal of hazardous waste and construction of any new facility except in accordance with a permit (“RCRA permit”) issued pursuant to that provision.

24. 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.
25. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.70, provides, in pertinent part with exceptions not relevant to this CA, that:
- (a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit [for the treatment, storage, or disposal of any hazardous waste] shall have interim status and shall be treated as having been issued a permit to the extent he or she has:
 - (1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity.
 - (2) Complied with the requirements of [40 C.F.R.] § 270.10 governing submission of part A applications.
26. 25 Pa. Code § 270a.1 incorporates by reference 40 C.F.R. § 270.1(b), which provides, in pertinent part, that owners and operators of hazardous waste management facilities must have "interim status" or a permit for the treatment, storage, or disposal of any hazardous waste, and that the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received such a permit is prohibited.
27. Respondent has never obtained a permit, pursuant to RCRA § 3005(a) or 25 Pa. Code § 270a.1, for the treatment, storage, or disposal of hazardous waste.
28. Respondent had "interim status," as described in RCRA § 3005(e) and 40 C.F.R. § 270.70, in lieu of a permit for the treatment, storage, or disposal of hazardous waste at the Facility until 1981, when the Facility withdrew Part A of its application for a permit under RCRA § 3005, thereby terminating its "interim status."
29. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "container" means a "portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."
30. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a), which provides, in pertinent part with exceptions not relevant to this matter:
- a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:
 - (1) The waste is placed:
 - (i) In containers and the generator complies with the applicable requirements of subparts I ... of 40 CFR part 265; and/or

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container ... is labeled or marked clearly with the words "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with §265.16, and with 40 CFR [§] 268.7(a)(5).

31. Pursuant to the provisions of RCRA § 3005(a) and (e) and 25 Pa. Code §§ 270a.1 and 262a.10, Respondent, as a generator of hazardous waste who has not had interim status or a permit for the storage of hazardous waste since 1981, has been prohibited from storing hazardous waste at its Facility since at least November 2005, unless Respondent qualified for exemption from the RCRA permit requirement by, among other things, managing each container of hazardous waste generated at the Facility in accordance with 40 C.F.R. Part 265, subpart I (§§ 265.170 - .178); clearly labeling each container with the date upon which each period of accumulation begins; clearly and visibly marking each container with the words "Hazardous Waste;" and complying with 40 C.F.R. § 265.16.
32. At the time of the EPA inspection on September 15, 2009, Respondent was storing, in a 30-cubic yard "roll-off" container labeled "Residual Waste" in a parking lot at the Facility, waste materials, which were generated at the Facility and included, among other things, sludge from the Facility's Wastewater Treatment Plant.
33. The waste materials in the "roll-off" container referred to in paragraph 32, above, were contained in unlabeled plastic bags, several of which were torn.
34. The materials in the "roll-off" container, referred to in paragraphs 32 and 33, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
35. The "roll-off" container referred to in paragraphs 32-34, above, is a "container" as defined in 25 Pa. Code § 260a.1.
36. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the "roll-off" container referred to in paragraphs 32-35, above.
37. At the time of the EPA inspection on September 15, 2009, Respondent was storing sludge and used gloves, generated by Respondent at the Facility, in a cart underneath the "DTC Sludge Filter Press" (FP-312) at the Facility's Wastewater Treatment Plant.
38. The contents of the cart referred to in paragraph 37, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
39. The cart referred to in paragraphs 37-38, above, is a "container" as defined in 25 Pa. Code § 260a.1.

40. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the cart referred to in paragraphs 37-39, above.
41. At the time of the EPA inspection on September 15, 2009, Respondent was storing waste materials such as personal protection equipment (e.g., disposable coveralls and gloves) and towels, generated by Respondent at the Facility, inside a plastic liner contained in a hopper located in the Grid Casting Area of the Facility.
42. The materials in the hopper referred to in paragraph 41, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
43. The hopper referred to in paragraphs 41-42, above, is a "container" as defined in 25 Pa. Code § 260a.1.
44. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the hopper referred to in paragraphs 41-43, above.
45. At the time of the EPA inspection on September 15, 2009, Respondent was storing waste materials such as personal protection equipment and towels inside a plastic liner contained in a hopper located in the Grid Storage Area of the Facility.
46. The materials in the hopper referred to in paragraph 45, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
47. The hopper referred to in paragraphs 45-46, above, is a "container" as defined in 25 Pa. Code § 260a.1.
48. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the hopper referred to in paragraphs 45-47, above.
49. At the time of the EPA inspection on September 15, 2009, Respondent was storing waste materials such as personal protection equipment (e.g., disposable coveralls and gloves) and towels, generated by Respondent at the Facility, inside plastic liners contained in two hoppers located in the Pasting Department of the Facility.
50. The materials in the two hoppers referred to in paragraph 49, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
51. The hoppers referred to in paragraphs 49-50, above, are "containers" as defined in 25 Pa. Code § 260a.1.
52. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on either hopper referred to in paragraphs 49-51, above.

53. At the time of the EPA inspection on September 15, 2009, Respondent was storing waste materials such as personal protection equipment (e.g., boots and coveralls) and debris, generated by Respondent at the Facility, inside a plastic liner contained in a hopper, which was labeled as "Hazardous Waste" and located in the Formation area of the Facility.
54. The materials in the hopper referred to in paragraph 53, above, were "hazardous waste."
55. The hopper referred to in paragraphs 53-54, above, is a "container" as defined in 25 Pa. Code § 260a.1.
56. At the time of the EPA inspection on September 15, 2009, the date when hazardous waste accumulation began was incorrectly marked as "October 13, 2008" on the hopper referred to in paragraphs 53-55, above.
57. At the time of the EPA inspection on September 15, 2009, Respondent was storing debris, generated by Respondent at the Facility, inside a plastic liner contained in a hopper, which was labeled as "Hazardous Waste" and located in the Maintenance and Case Formation/Distribution Center at the Facility.
58. The materials in the hopper referred to in paragraph 57, above, were "hazardous waste."
59. The hopper referred to in paragraphs 57-58, above, is a "container" as defined in 25 Pa. Code § 260a.1.
60. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the hopper referred to in paragraphs 57-59, above.
61. At the time of the EPA inspection on September 15, 2009, Respondent was storing debris, generated by Respondent at the Facility, inside a plastic liner contained in a hopper, which was labeled as "Hazardous Waste" and located in the Assembly area of the Facility.
62. The materials in the hopper referred to in paragraph 61, above, were "hazardous waste."
63. The hopper referred to in paragraphs 61-62, above, is a "container" as defined in 25 Pa. Code § 260a.1.
64. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on the hopper referred to in paragraphs 61-63, above.
65. At the time of the EPA inspection on September 15, 2009, Respondent was storing waste materials, generated by Respondent at the Facility, in twelve (12) 55-gallon drums, labeled as "Hazardous Waste," in the Hazardous Waste Room at the Facility. Nine of the drums were black and labeled as containing flammable solids, toluene and xylene. The other three drums were blue.

66. The materials in the nine black 55-gallon drums, referred to in paragraph 65, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Numbers F005 and D001.
67. The materials in the three blue 55-gallon drums, referred to in paragraph 65, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.
68. The drums referred to in paragraphs 65-67, above, are "containers" as defined in 25 Pa. Code § 260a.1.
69. At the time of the EPA inspection on September 15, 2009, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on any of the nine black drums or on one of the three blue drums referred to in paragraphs 66 and 67, respectively, above.
70. By failing to clearly and/or accurately mark the date on which the period of hazardous waste accumulation began on each container referred to in paragraphs 32-69, above, Respondent failed to qualify under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(2), for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 15, 2009.
71. At the time of the EPA inspection on September 15, 2009, the "roll-off" container, referred to in paragraphs 32-36, above, was labeled with the words "Residual Waste," but was not labeled with the words "Hazardous Waste."
72. At the time of the EPA inspection on September 15, 2009, the cart, referred to in paragraphs 37-40, above, was not labeled with the words "Hazardous Waste."
73. By failing to label or mark clearly with the words "Hazardous Waste" each container referred to in paragraphs 71-72, above, Respondent failed to qualify under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(3), for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 15, 2009.
74. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(c), which provides, in pertinent part with exceptions not relevant to this matter:
- (1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely 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 paragraph (a) of this section provided he:
 - (i) Complies with [40 C.F.R.] ... § 265.173(a) ...; and
 - (ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

75. At the time of the EPA inspection on September 15, 2009, Respondent was storing, in a 55-gallon drum in the Hazardous Waste Room at the Facility, materials removed from punctured aerosol cans.
76. The materials in the 55-gallon drum, referred to in paragraph 75, above, were "hazardous waste."
77. The drum referred to in paragraphs 75-76, above, is a "container" as defined in 25 Pa. Code § 260a.1.
78. At the time of the EPA inspection on September 15, 2009, the 55-gallon drum, referred to in paragraphs 75-77, above, was labeled with the words "Spray Paint Cans Only" but was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
79. By failing to mark a container of hazardous waste with the words "Hazardous Waste," or with other words that identified the contents of the container, in accordance with 25 Pa. Code § 262a.10, as alleged in paragraph 78, above, Respondent failed to qualify under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 15, 2009.
80. To qualify for the exemption from the requirement to have a permit for the storage of hazardous waste, Respondent was required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i) and (c)(1)(i), to manage containers of hazardous waste in accordance with 40 C.F.R. § 265.173(a).
81. 40 C.F.R. § 265.173(a) provides that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."
82. At the time of the EPA inspection on September 15, 2009, the "roll-off" container referred to in paragraphs 32-36, above, contained several plastic bags, some of which were torn, and the tarp cover for the "roll-off" was mostly open.
83. The "roll-off" container referred to in paragraphs 32-36 and 82, above, was not closed.
84. At the time of the EPA inspection on September 15, 2009, no waste was being added to or removed from the "roll-off" container referred to in paragraphs 32-36 and 82-83, above.
85. At the time of the EPA inspection on September 22, 2009, Respondent was storing plastic bags filled with waste materials in a 30-cubic yard "roll-off" container, labeled "Residual Waste" and "Hazardous Waste," in a parking lot at the Facility.
86. The materials in the "roll-off" container, referred to in paragraph 85, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D008.

87. The "roll-off" container referred to in paragraphs 85-86, above, is a "container" as defined in 25 Pa. Code § 260a.1.
88. At the time of the EPA inspection on September 22, 2009, the "roll-off" container referred to in paragraphs 85-87, above, was not closed.
89. At the time of the EPA inspection on September 22, 2009, no waste was being added to or removed from the "roll-off" container referred to in paragraphs 85-88, above.
90. At the time of the EPA inspection on September 15, 2009, the cart referred to in paragraphs 37-40, above, was not closed.
91. At the time of the EPA inspection on September 15, 2009, no waste was being added to or removed from the open cart referred to in paragraphs 37-40 and 90, above.
92. At the time of the EPA inspection on September 15, 2009, the hopper located in the Grid Casting Area referred to in paragraphs 41-44, above, was not closed.
93. At the time of the EPA inspection on September 15, 2009, no waste was being added to or removed from the open hopper referred to in paragraphs 41-44 and 92, above.
94. By failing to keep closed the "roll-off" containers referred to in paragraphs 82-89, above, the cart referred to in paragraphs 90-91, above, and the hopper referred to in paragraphs 92-93, above, when waste was not being added to or removed from those containers, as required by 40 C.F.R. § 265.173(a), Respondent was not complying with the conditions for exemption from the permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), and therefore failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 15 and 22, 2009.
95. At the time of the EPA inspection on September 15, 2009, the puncturing device and 55-gallon drum referred to in paragraphs 75-78, above, were not closed.
96. At the time of the EPA inspection on September 15, 2009, no waste was being added to or removed from the open puncturing device and 55-gallon drum referred to in paragraphs 75-78 and 95, above.
97. By failing to keep closed the puncturing device and 55-gallon drum referred to in paragraphs 75-78 and 95-96, above, when waste was not being added to or removed from it, as required by 40 C.F.R. § 265.173(a), Respondent was not complying with the conditions for exemption from permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), and therefore failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 15, 2009.
98. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), which requires that generators comply with 40 C.F.R. § 265.174. 40 C.F.R. § 265.174 provides, in relevant part, that "[a]t least weekly, the owner or operator must inspect areas where

containers are stored ... [to] look for leaking containers and for deterioration of containers.”

99. Between 2005 and 2009, Respondent was routinely using certain areas within the Facility for the storage of more than 55 gallons of hazardous waste in containers. On September 15, 2009, there were twelve such areas, several of which had been used for the accumulation of up to 55 gallons of hazardous waste during prior years.
100. On certain occasions between 2005 and 2009, Respondent inspected the hazardous waste storage areas at the Facility to review, among other things, the placement, labeling, and condition of containers, as well as, waste inventory, signage, and remedial actions at those areas. Respondent’s employees documented the inspections in an inspection log, which Respondent kept on file at the Facility.
101. For calendar year 2008, Respondent did not inspect and did not record inspections of the Facility between April 11, 2008 and April 25, 2008, between June 6, 2008 and June 20, 2008, between June 27, 2008 and July 11, 2008, between August 28, 2008 and September 11, 2008, between September 25, 2008 and October 9, 2008, between October 23, 2008 and November 13, 2008, between November 20, 2008 and December 4, 2008, and between December 18, 2008 and January 8, 2009.
102. For calendar year 2007, Respondent did not inspect and did not record inspections of the Facility between January 5, 2007 and September 7, 2007.
103. For calendar year 2006, Respondent did not inspect and did not record inspections of the Facility during the month of January and between June 29, 2006 and July 13, 2006, between November 17, 2006 and December 1, 2006 and between December 1, 2006 and January 5, 2007.
104. By failing to inspect container storage areas at least weekly, in accordance with 40 C.F.R. § 265.174, during the time periods alleged in paragraphs 101-103, above, Respondent failed to qualify, under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.
105. 25 Pa. Code § 262a.10 (authorized in 2004) incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), which requires that generators comply with 40 C.F.R. § 265.16. 40 C.F.R. § 265.16 provides, in relevant part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility’s compliance with the requirements of [40 C.F.R. Part 265]. ...

(c) Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 265.16(a)].

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under [40 C.F.R. § 265.16(d)(1)] ...;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under [40 C.F.R. § 265.16(d)(1)];

(4) Records that document that the training or job experience required under paragraphs [40 C.F.R. § 265.16(a), (b), and (c)] has been given to, and completed by, facility personnel.

106. To qualify under 25 Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), for exemption from the requirement to have a permit for the storage of hazardous waste, Respondent was required to assure that all Facility personnel responsible for hazardous waste management took part in hazardous waste management training and to maintain documents and records in accordance with 40 C.F.R. § 265.16.
107. Prior to September 22, 2009, two of Respondent's employees whose positions involved handling hazardous waste at the Facility since at least January 1, 2006 had not successfully completed a program of classroom instruction or on-the-job training in accordance with 40 C.F.R. § 265.16(a).
108. One of Respondent's employees, other than those referred to in paragraph 107, above, whose position involved hazardous waste management since at least January 1, 2006, did not take part in an annual review of initial training, in accordance with 40 C.F.R. § 265.16(c), during 2007 and 2009.
109. By failing to assure that the employees referred to in paragraphs 107-108, above, completed initial and/or refresher hazardous waste management training in accordance with 40 C.F.R. § 265.16(a) and (c), Respondent was not complying with the conditions for exemption from permit requirements under 25 Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001) and, therefore, failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 during 2006 through 2009.
110. On September 22, 2009, Respondent was not maintaining: 1) records documenting the job title of each position related to hazardous waste management at the Facility and the name of the employee filling each job, as required by 40 C.F.R. § 265.16(d)(1), and 2) a written job description for each of the positions related to hazardous waste management at the Facility, as required by 40 C.F.R. § 265.16(d)(2).
111. By failing to maintain records documenting the job titles and names of the employees filling the positions related to hazardous waste management at the Facility, and a written description of each of those positions, as required by 40 C.F.R. § 265.16(d), Respondent was not complying with the conditions for exemption from permit requirements under 25

Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), and therefore failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 22, 2009.

112. 25 Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), requires that generators have a contingency plan, as required by 40 C.F.R. § 265.51, that contains the information specified in 40 C.F.R. § 265.52, which provides, in relevant part:

(a) The contingency plan must describe the actions facility personnel must take to comply with [40 C.F.R. §§ 265.51 and .56] in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

* * * *

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. . . . 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.

113. To qualify under 25 Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), for exemption from the requirement to have a permit for the storage of hazardous waste, Respondent has been required to maintain an adequate contingency plan in accordance with 40 C.F.R. §§ 265.51 and .52 since at least November 2005.

114. On September 22, 2009, Respondent's contingency plan for the Facility did not include addresses for two (2) emergency coordinators in accordance with 40 C.F.R. § 265.52(d).

115. On September 22, 2009, Respondent's contingency plan for the Facility did not contain a list of emergency equipment with locations, descriptions, and capabilities of such equipment in accordance with 40 C.F.R. § 265.52(e).

116. By failing to maintain an adequate contingency plan in accordance with 40 C.F.R. § 265.52, Respondent was not complying with the conditions for exemption from permit requirements under 25 Pa. Code § 262a.10 (authorized in 2004), which incorporates by reference 40 C.F.R. § 262.34(a)(4) (2001), and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1 on September 22, 2009.

117. Pursuant to 25 Pa. Code § 260a.10, "facility" means "[t]he land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed."

118. As a place where hazardous waste has been stored, Respondent's Facility has been a "facility" as defined in 25 Pa. Code § 260a.10 since at least November 2005.

119. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "owner" means "the person who owns a facility or part of a facility."
120. Since at least November 2005, Respondent has been the "owner" of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
121. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "operator" means "the person responsible for the overall operation of a facility."
122. Since at least November 2005, Respondent has been the "operator" of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
123. For each of the reasons alleged in paragraphs 70, 73, 79, 94, 97, 104, 109, 111, and 116, above, Respondent did not qualify under 25 Pa. Code § 262a.10 for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1, and, therefore, was prohibited from storing hazardous waste at the Facility without a permit from at least November 2005 until at least September 22, 2009. Because it failed to comply with the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, Respondent's Facility was required to comply with the requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities set forth at 25 Pa. Code Ch. 264a.
124. From at least November 2005 until at least September 22, 2009, Respondent violated the permit requirement in RCRA § 3005(a) and 25 Pa. Code § 270a.1 by storing containers of hazardous wastes under the circumstances alleged in paragraphs 27-123, above, without a permit to store such waste, or "interim status," and without qualifying under 25 Pa. Code § 262a.10 for exemption from such permit requirement, for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT II

(Failure to Keep Containers Closed)

125. The allegations in paragraphs 1 through 124 are incorporated herein by reference as though fully set forth at length.
126. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.173(a), which provides that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."
127. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep the "roll-off" containers, referred to in paragraphs 32-36 and 82-89, above, closed when waste was not being added to or removed from those containers on September 15 and 22, 2009.
128. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep the cart beneath the "DTC Sludge Filter Press" (FP-312) near the Wastewater Treatment Plant, referred to in paragraphs 37-40 and 90-91, above, closed when waste was not being added to or removed from it on September 15, 2009.

129. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep the hopper located in the Grid Casting Area, referred to in paragraphs 41-44 and 92-93, above, closed when waste was not being added to or removed from it on September 15, 2009.
130. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep closed the 55-gallon drum of punctured aerosol can contents, referred to in paragraphs 75-78 and 95-96, above, when waste was not being added to or removed from it on September 15, 2009.
131. EPA's inspector did not observe releases of hazardous waste from the containers referred to in paragraphs 126-130, above, when he inspected them on the dates specified in those paragraphs.
132. Respondent's failure to keep containers of hazardous waste closed when no waste was being added to or removed from those containers on September 15 and 22, 2009, as alleged in paragraphs 82-96, above, violates 25 Pa. Code § 264a.1, for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT III

(Failure to Conduct Weekly Inspections of Central Hazardous Waste Storage Areas)

133. The allegations in paragraphs 1 through 132, above, are incorporated herein by reference as though fully set forth at length.
134. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.174, which provides, in relevant part, that, "[a]t least weekly, the owner or operator must inspect areas where containers are stored"
135. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.15(d), which provides, in relevant part, that, "the owner or operator must record inspections in an inspection log or summary"
136. As an owner and operator, Respondent has been required, since at least November 2005, to inspect, among other things, areas where more than 55 gallons of hazardous wastes were stored in containers and to record inspection results in an inspection log or summary in accordance with 40 C.F.R. §§ 264.174 and .15(d), respectively.
137. By failing to inspect containers with more than 55 gallons of hazardous wastes in storage at the Facility and/or to record inspection results during certain weeks during calendar years 2006 through 2008 as alleged in paragraphs 101-103, above, Respondent violated 25 Pa. Code § 264a.1, for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT IV

(Failure to Provide Initial RCRA Training)

138. The allegations in paragraph 1 through 137, above, are incorporated herein by reference as though fully set forth at length.

139. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16, which provides, in pertinent part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 264]. ...

140. As an owner and operator since at least November 2005, Respondent has been required to train all Facility personnel responsible for hazardous waste management in accordance with 40 C.F.R. § 264.16(a).

141. By failing to provide initial hazardous waste management training for two employees whose jobs involved hazardous waste management at the Facility between January 1, 2006 and September 22, 2009, as alleged in paragraph 107, above, Respondent violated 25 Pa. Code § 264a.1, for which violation RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT V

(Failure to Provide Annual RCRA Refresher Training)

142. The allegations in paragraphs 1 through 141, above, are incorporated herein by reference as though fully set forth at length.

143. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16(c), which provides, in pertinent part: "Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 264.16(a)]."

144. As an owner and operator since at least November 2005, Respondent has been required to assure that each of its employees whose responsibilities include the management of hazardous waste take part in an annual review of initial training in accordance with 40 C.F.R. § 264.16(c).

145. By failing to assure that one of its employees took part in an annual review of initial hazardous waste management training during 2007 and 2009, as alleged in paragraph 108, above, Respondent violated 25 Pa. Code § 264a.1, for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT VI

(Failure to Maintain RCRA Training Records)

146. The allegations in paragraphs 1 through 145, above, are incorporated herein by reference as though fully set forth at length.

147. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16, which provides, in pertinent part:

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job;

(2) A written job description for each position listed under (d)(1) of this section.

...

148. As an owner and operator since at least November 2005, Respondent has been required to maintain documents and records at the Facility, in accordance with 40 C.F.R. § 264.16(d)(1) and (2), including: the job title for each position at the Facility related to hazardous waste management, the name of the employee filling each job, and a written job description for each position related to hazardous waste management in accordance with 40 C.F.R. § 264.16(d)(1).
149. By failing to maintain written records documenting the job title for each position, the name of each employee filling each of those jobs, and the written job description for each position held by an employee whose duties related to hazardous waste management at the Facility, as alleged in paragraph 110, above, Respondent violated 25 Pa. Code § 264a.1 on September 22, 2009, for which violation RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT VII

(Failure to Maintain Updated Contingency Plan)

150. The allegations in paragraphs 1 through 149, above, are incorporated herein by reference as though fully set forth at length.

151. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.52, which requires, in pertinent part:

(a) The contingency plan must describe the actions facility personnel must take to comply with [40 C.F.R. §§ 264.51 and .56] in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

* * * *

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator ...

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required ... 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.

152. As an owner and operator on September 22, 2009, Respondent was required to have a contingency plan that listed the addresses of all persons qualified to act as an emergency coordinator in accordance with 40 C.F.R. § 264.52(d).

153. As an owner and operator since at least November 2005, Respondent was required to have a contingency plan that included a list of all emergency equipment at the Facility in accordance with 40 C.F.R. § 264.52(e).
154. By failing to list the addresses for two emergency coordinators and to list emergency equipment with locations, descriptions, and capabilities of such equipment in the Contingency Plan at the Facility on September 22, 2009, as alleged in paragraphs 114 and 115, above, Respondent violated 25 Pa. Code § 264a.1 which incorporates by reference 40 C.F.R. § 264.52, for which violation RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNTS VIII-X

(Failure to Retain TSD-signed Copies of Manifests or Submit Exception Reports)

155. The allegations in paragraphs 1 through 154, above, are incorporated herein by reference as though fully set forth at length.
156. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.40(a), which provides that “[a] generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”
157. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.42, which requires, in pertinent part:
- (a)(1) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the hand-written signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.
- (2) A generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the EPA ... if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.
158. As a generator that shipped hazardous waste to a designated facility for disposal, Respondent was required to retain the signed copy of each manifest it received from the designated facility for at least three years from the date the waste was accepted by the initial transporter or, if a signed copy of the manifest was not received from the owner or operator of the designated facility within 45 days after the waste was accepted by the initial transporter, submit to the EPA an Exception Report for such manifest in accordance with 40 C.F.R. § 262.42(a)(2).
159. When asked to provide certain records to the EPA inspector on September 22, 2009, Respondent did not have copies of the following manifests that were signed by the owner

or operator of the designated facility: Manifest No. 2054654 (accepted April 5, 2007 by the initial transporter), and Manifest Nos. 2054896 and 2054897 (accepted May 22, 2007 by the initial transporter), and had not submitted an Exception Report to the EPA for each of those manifests within 45 days of the date when the waste was accepted by the initial transporter.

160. Respondent's failure to submit to the EPA, three (3) Exception Reports, as alleged in paragraph 159, above, by May 20, 2007 and July 6, 2007 respectively, or to retain as a record for at least three years the copies of Manifest Nos. 2054654, 2054896, and 2054897 signed by the owner or operator of the designated facility, constitutes three (3) violations of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. §§ 262.40(a) and .42(a), for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COUNT XI

(Failure to Comply with LDR Storage Requirements)

161. The allegations in paragraphs 1 through 160, above, are incorporated herein by reference as though fully set forth at length.
162. 25 Pa. Code § 268a.1 incorporates by reference 40 C.F.R. § 268.50, which provides, in pertinent part with exceptions not relevant to this matter:
- (a) ... the storage of hazardous wastes restricted from land disposal under subpart C of [40 C.F.R. Part 268] ... is prohibited, unless the following conditions are met:
 - (1) A generator stores such wastes in ... containers ... and the generator complies with the requirements in [40 C.F.R.] § 262.34 and parts 264 and 265 ...
163. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.9(c), .37, and .40, the hazardous wastes referred to in paragraphs 32-86, above, are, and were at the time of the violation alleged in this Count, prohibited from land disposal.
164. During the time when Respondent was storing the hazardous wastes referred to in paragraphs 32-86, above, those wastes did not meet the treatment standards specified in 40 C.F.R. §§ 268.40 - .43, or such wastes were not in compliance with applicable prohibitions specified in RCRA Section 3004, 42 U.S.C. § 6924.
165. As a generator of hazardous wastes that are prohibited from land disposal, Respondent has been prohibited from storing such wastes at the Facility since at least November 2005, unless it complied with the requirements in 40 C.F.R. § 262.34 and parts 264 and 265.
166. As described in paragraphs 32-154 and 164, above, Respondent stored hazardous wastes that are restricted from land disposal without complying with the following requirements of 40 C.F.R. § 262.34 and parts 264 and 265: 1) clearly marking containers where visible for inspection with the date when hazardous waste accumulation began; 2) labeling containers with the words "Hazardous Waste;" 3) keeping containers closed in

accordance with 40 C.F.R. §§ 264.173(a) and 265.173(a); 4) conducting weekly inspections of hazardous waste storage areas, and preparing and maintaining records of such inspections, in accordance with 40 C.F.R. §§ 264.174 and .15, and 265.174; 5) maintaining an updated contingency plan, in accordance with 40 C.F.R. §§ 264.52 and 265.52 and 6) providing and documenting a hazardous waste training program in accordance with 40 C.F.R. §§ 264.16 and 265.16.

167. By storing land disposal restricted waste from at least January 2006 through September 22, 2009 without complying with the requirements of 40 C.F.R. § 262.34 and parts 264 and 265 as described in paragraph 166, above, Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50, for which violations RCRA § 3008(a) authorizes EPA to assess a penalty.

COMPLIANCE ORDER

168. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to perform the Compliance Tasks listed in paragraphs 168.A through G, below. ("Days" as used herein shall mean calendar days unless specified otherwise.)

Compliance Tasks

- A. Respondent shall immediately cease storing hazardous waste at the Facility except: 1) in accordance with a permit issued or interim status conferred pursuant to RCRA § 3005, 42 U.S.C. § 6925, and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270, as applicable, or in accordance with an exception or exclusion from the requirement to have a permit or interim status under RCRA or the authorized Pennsylvania Hazardous Waste Regulations, as applicable; and 2) in accordance with 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50.
- B. If Respondent continues to accumulate hazardous waste in containers at the Facility pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), Respondent shall, among other things, 1) perform training and maintain adequate records of the training provided, in accordance with 40 C.F.R. § 265.16; 2) update and maintain an adequate contingency plan, in accordance with 40 C.F.R. Part 265, subpart D; 3) manage and inspect all containers in accordance with 25 Pa. Code Ch. 265a, which incorporates by reference 40 C.F.R. Part 265, subparts I and CC; and 4) label and date all containers in accordance with 40 C.F.R. § 262.34(a) or (c), as applicable.
- C. Respondent shall maintain copies of signed manifests and submit manifest exception reports, in accordance with 25 Pa. Code Ch. 62a, which incorporates by reference 40 C.F.R. §§ 262.40 and .42.
- D. Certification of Compliance. Within thirty (30) days after the effective date of this Order, submit to EPA a written statement, accompanied by a certification in the form set forth in paragraph E, below, and signed by a responsible corporate officer, certifying that Respondent has completed Compliance Tasks A through C,

above, and is in compliance with the requirements of RCRA, the federal regulations implementing RCRA, and the authorized Pennsylvania Hazardous Waste Regulations, as applicable, with particular emphasis on the requirements alleged to have been violated herein. If Respondent is not in compliance with the requirements of RCRA or the authorized Pennsylvania Hazardous Waste Regulations at the time of the certification, Respondent shall describe those requirements with which it is not in compliance and shall describe the measures it has taken and will take to achieve compliance (including a schedule for achieving such compliance).

E. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

F. The certification of the responsible corporate officer required above shall be in the following form:

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

Signature: _____

Name: _____

Title: _____

- G. Any notifications or submissions to EPA required by this Order shall be sent to the attention of:

Martin Matlin
RCRA Enforcement and Compliance Officer (3LC70)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

John Ruggero
Senior Assistant Regional Counsel (3RC30)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

- H. Any violation of this Order or further violation of RCRA Subtitle C may subject Respondent to further administrative, civil and/or criminal enforcement action, including the imposition of civil penalties and criminal fines and/or imprisonment, as provided in RCRA § 3008, 42 U.S.C. § 6928.

Civil Penalty

169. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of Fifty-two Thousand Three Hundred Sixty Dollars (\$52,360.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
170. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, which are set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). These factors were applied to the particular facts and circumstances of this case in the manner described in EPA's *RCRA Civil Penalty Policy* (June 2003). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19 in determining the penalty amount set forth in paragraph 169, above.
171. Respondent shall pay the civil penalty amount assessed in paragraph 169, above, plus any interest, administrative fees, and late payment penalties owed, by cashier's check, certified check, or electronic wire transfer, in the following manner:

A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number shown in the caption of this action;

B. All checks shall be made payable to "**United States Treasury**";

C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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

Contact: 314-418-1028

E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 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"

F. 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

Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

G. Additional payment guidance is available at:

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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

John Ruggero
Senior Assistant Regional Counsel
U.S. EPA Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

172. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
173. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).

174. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Chapter 9, *Receivables and Billings*, of EPA's *Resource Management Directives System* (No. 2540-09), 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.
175. A penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
176. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO.

Certification of Compliance

177. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of RCRA.

Other Applicable Laws

178. Nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

Reservation of Rights

179. This CAFO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to 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.

Scope of Settlement

180. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with this CAFO shall not be a defense to any action commenced by the United States at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

181. This CAFO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CAFO.

Effective Date

182. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or the Administrator's designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

183. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 10/6/10

By: 

Yuasa Battery, Inc.

For Complainant:

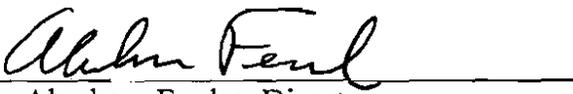
Date: 10/21/2010

By: 

John Ruggiero
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee, the Regional Judicial Officer, issue the accompanying Final Order.

Date: 11/1/10

By: 

Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, I hand-delivered to the Regional Hearing Clerk, EPA Region III the original CONSENT AGREEMENT AND FINAL ORDER (CAFO) in *In the Matter of: Yuasa Battery, Inc.*, Docket No. RCRA-03-2011-0001, and the original memo from Ms. Marcia Mulkey and Mr. Abraham Ferdas transmitting the CAFO to the Regional Judicial Officer (RJO). In addition, I caused copies of those documents to be sent to the following individual via the manner specified:

UPS
OVERNIGHT DELIVERY:

Susan P. LeGros, Esq.
Stevens & Lee
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406

EPA REGION III PHILA, PA
NOV 4 11 01 16

NOV 4 2010
Date


John Ruggiero
Senior Assistant Regional Counsel
EPA Region III (3RC30)
1650 Arch St.
Philadelphia, PA 19103-2029
215-814-2142

