

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: Joyce Howell
Name of Contact person

3/30/2012
Date

in the Region 3 Office of Regional Counsel

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

Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent
Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Company making payment: Hercon Laboratories

The Total Dollar Amount of Receivable: 5,000.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number: RCRA-03-2012-0129

The Site-Specific Superfund Acct. Number: n/a

The Designated Regional/HQ Program Office SLAP/

RECEIVED
2012 MAR 30 PM 2:26
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

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

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | |

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Hercon Laboratories Corporation	:	
	:	
Respondent,	:	EPA Docket No. RCRA-03-2012-0129
	:	
Hercon Laboratories Corporation	:	
101 Sinking Springs Lane	:	
Emigsville, PA 17318	:	
	:	Proceeding under Section 3008(a)
	:	of the Resource Conservation and
	:	Recovery Act, as amended, 42 U.S.C.
	:	Section 6928(a)
	:	
Facility.	:	

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2012 MAR 30 PM 2:14

RECEIVED

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA", "Agency" or "Complainant") and Hercon Laboratories Corporation ("Respondent") pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. This Consent Agreement ("CA") and the accompanying Final Order ("FO") address alleged violations by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations ("PaHWMR"), codified at 25 Pa. Code Chapters 260a – 266c, 266b, and 268c – 270a. Effective January 30, 1986, the PaHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). See *51 Fed. Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of

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Federal Regulations by reference. See 25 Pa. Code § 260a. 3(e).

3. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached FO (hereinafter jointly referred to as this "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g) to resolve alleged violations of RCRA at Respondent's facility at 101 Sinking Springs Lane, Emigsville, Pennsylvania, 17318 (the "Facility").
4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
5. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 4, above.
6. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Each party shall bear its own costs and attorneys fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

10. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

11. Respondent is, and was at the time of the violations alleged herein, a corporation of the State of Delaware, and is 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.

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12. Respondent is, and has been at all times relevant to this Consent Agreement, the "owner" and "operator" of a "facility", described below, as those terms are defined in 25 Pa. Code § 260a.10, which, with the exception, among others, of the term "facility", incorporates by reference 40 C.F.R. § 260.10.
13. The facility referred to in Paragraph 12, above, including all of its associated equipment and structures (hereinafter a "Facility"), is a manufacturing facility located at 101 Sinking Springs Lane, Emigsville, Pennsylvania, 17318.
14. Respondent produces transdermal medications at the Facility.
15. Respondent is a small quantity generator of hazardous waste. Respondent is assigned EPA ID No. PAD981946569.
16. Respondent is a "small quantity handler of universal waste," as that term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, with exceptions not relevant herein.
17. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" in "containers" at the Facility of materials described below that are "solid wastes" and "hazardous wastes", as those terms are defined in 25 Pa. Code § 260a.10, which with the exception, among others, of "storage" incorporates by reference 40 C.F.R. § 260.10.
18. On March 2, 2011, representatives of EPA and the PaDEP conducted a RCRA Compliance Evaluation Inspection ("RCRA CEI") at the Facility.
19. On March 2, 2011, "hazardous wastes" generated by Respondent were in "storage" at the Facility as those terms are defined by 25 Pa. § 260a.10, which incorporates by reference 40 C.F.R. § 260.10 with the exception of "storage."
20. Respondent generates waste methyl ethyl ketone, at the Facility. Waste methyl ethyl ketone is a listed hazardous waste (F005) and a hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.23, and a hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31 because it exhibits the characteristic for toxicity (D035).
21. Respondent generates waste solvents at the Facility. Waste solvents are hazardous wastes within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22, because they have the characteristic for ignitability (D001) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22.

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22. Respondent generates waste acetone (F003) at the Facility. Waste acetone is a listed hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31(a).
23. Respondent generates waste di(2-ethylhexyl)phthalate ("DOP") at the Facility. Waste DOP (U028) is a hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.33(f) because it exhibits the characteristic for toxicity.
24. Respondent generates waste nicotine (P075) at the Facility. Waste nicotine is an acute hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.33(e.) because it exhibits the characteristic for acute toxicity.

COUNT I

(Operating Without Qualifying for a Permit Exemption or Obtaining Interim Status or a Permit)

25. The preceding paragraphs are incorporated by reference.
26. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e) provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
27. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), provides, in pertinent part, that a generator who generates greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things, the generator does not accumulate hazardous waste on-site for greater than 180 days.
28. At the time of the March 2, 2011 RCRA CEI, Respondent had stored a container of hazardous waste described in Paragraph 21 above for 1,175 days at the Facility.
29. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(4), provides, in pertinent part, that a generator who generates greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things while being stored on-site, each container holding hazardous waste is labeled with the words "Hazardous Waste", as provided in 40 C.F.R. § 262.34(a)(3).

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30. At the time of the March 2, 2011 RCRA CEI, Respondent stored containers of hazardous waste described in Paragraphs 20 – 24 above at the Facility that were not labeled with the words “Hazardous Waste” as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(4), which references 40 C.F.R. § 262.34(a)(3).
31. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(4), provides, in pertinent part, that a generator who generates greater than 100 kg but less than 1,000 kg or more of hazardous waste in a calendar month may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things while being stored on-site, each container is clearly marked with the date upon which each period of accumulation began, as provided in 40 C.F.R. § 262.34(d)(4), which references 40 C.F.R. Part 262.34(a)(2).
32. At the time of the March 2, 2011 RCRA CEI, Respondent stored containers of hazardous waste described in Paragraphs 20 – 24 above at the Facility that were not marked with the date upon which each period of accumulation began as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(4), which references 40 C.F.R. Part 262.34(a)(2).
33. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), provides, in pertinent part, that a generator who generates greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things, the generator conduct, at least weekly, an inspection of the areas where hazardous waste are stored, as required by 40 C.F.R. § 262.34(d)(2), which references 40 C.F.R. § 265.174.
34. At the time of the March 2, 2011 RCRA CEI, Respondent did not conduct, at least weekly, an inspection of the area at the Facility where hazardous waste is stored, as required by 40 C.F.R. § 262.34(d)(2), which in turn references 40 C.F.R. § 265.174.
35. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(5)(iii), provides, in pertinent part, that a generator who generates greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things, the generator ensures that employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies, as required by 40 C.F.R. § 262.34(d)(5)(iii).
36. At the time of the March 2, 2011 RCRA CEI, Respondent had not ensured that employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies, as required by 40 C.F.R. § 262.34(d)(5)(iii).

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37. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii), provides that a generator may accumulate hazardous waste 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 interim status provided that, among other things, containers being used to accumulate hazardous waste are labeled with the words "Hazardous Waste" or other words that identify the contents of the containers.
38. At the time of the March 2, 2011 RCRA CEI, Respondent accumulated hazardous waste described in Paragraphs 20 – 24 above at or near the point of generation at the Facility without labeling the containers being used to accumulate hazardous waste with the words "Hazardous Waste" or other words that identify the contents of the containers.
39. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(i), which references 40 C.F.R. § 265.173(a), provides that a generator may accumulate hazardous waste 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 interim status provided that, among other things, containers being used to accumulate hazardous waste are kept closed during storage, except when necessary to add or remove waste.
40. At the time of the March 2, 2011 RCRA CEI, Respondent accumulated hazardous waste described in Paragraph 20 above, at the Facility at or near the point of generation without keeping containers being used to accumulate hazardous waste closed during storage, except when necessary to add or remove waste.
41. Respondent failed to qualify for the "less than 180-day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), by failing to satisfy the conditions for such exemptions as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), referred to in Paragraphs 28, 30, 32, 34, and 36, above
42. Respondent failed to qualify for the generator satellite accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c), by failing to satisfy the conditions for such exemptions as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c), referred to in Paragraphs 38 and 40, above.
43. By failing to meet the criteria for exemption, the Facility became a hazardous waste treatment, storage or disposal "facility", as that term is defined by 25 Pa. Code § 260a.10.
44. Respondent does not have, and never had, a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility.

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45. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for its hazardous waste storage activities described in this count.
46. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status or valid exemption.

COUNT II
(Hazardous Waste Determinations)

47. The preceding paragraphs are incorporated by reference.

25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant here, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following methods:

(a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.

(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.

(c) For purposes of compliance with 40 C.F.R. Part 268, or if the waste is not listed in subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in subpart C of 40 C.F.R. Part 261 by either:

(1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

48. At the time of the March 2, 2011 RCRA CEI, Respondent had failed to conduct hazardous waste determinations on drums of waste solvent (D001), waste DOP (U028) and waste nicotine (P075).

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49. At the time of the March 2, 2011 RCRA CEI, Respondent disposed of used aerosol cans in the trash without first making a hazardous waste determination of the used aerosol cans.
50. The wastes referred to in Paragraphs 48 and 49 above, are and were at the time of the alleged violations "solid wastes" as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2, with exceptions not relevant here.
51. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 by failing to conduct hazardous waste determinations on hazardous waste generated at the Facility.

COUNT III
(Container Management)

52. The preceding paragraphs are incorporated by reference.
53. Pursuant to 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173 (a), Respondent is required to keep containers of hazardous waste closed during storage except when it is necessary to add or remove waste.
54. At the time of the March 2, 2011 RCRA CEI, Respondent failed to keep containers, specifically a container of hazardous waste methyl ethyl ketone (F005) and a container of hazardous waste solvents (D001, D035, F003 and F005) used for storage of such hazardous waste closed at all times except when adding or removing waste as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a).
55. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep containers of hazardous waste referred to in Paragraph 54, above, closed during storage except when necessary to add or remove waste.

COUNT IV
(Weekly Inspections)

56. The preceding paragraphs are incorporated by reference.
57. Pursuant to 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174, Respondent is required to inspect, at least weekly, areas where containers of hazardous waste are stored.
58. From at least January 1, 2007 through March 2, 2011, Respondent failed to conduct weekly inspections of the area at the Facility used to store containers of hazardous waste.

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59. From at least January 1, 2007 through March 2, 2011, Respondent violated 25 Pa. Code § 262.10, which incorporates by reference 40 C.F.R. § 262.34(d) which in turn incorporates 40 C.F.R. 265.174, by failing to conduct weekly inspections of the area at the Facility used to store containers of hazardous waste.

COUNT V

(Universal Waste Storage-Closed Containers)

60. The preceding paragraphs are incorporated by reference.
61. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), Respondent is required to keep containers of universal waste lamps closed.
62. At the time of the May 2, 2011 RCRA CEI, EPA inspectors observed three open containers of universal waste lamps.
63. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by failing to keep containers of universal waste lamps closed.

COUNT VI

(Universal Waste Storage-Labeling)

64. The preceding paragraphs are incorporated by reference.
65. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), Respondent is required to label containers of universal waste lamps with the words "Universal Waste -Lamps" or "Waste Lamps" or "Used Lamps."
66. At the time of the May 2, 2011 RCRA CEI, EPA inspectors observed three containers of universal waste lamps that were not labeled with the words "Universal Waste -Lamps" or "Waste Lamps" or "Used Lamps."
67. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), by failing to keep containers of universal waste lamps labeled with the words "Universal Waste -Lamps" or "Waste Lamps" or "Used Lamps."

III. CIVIL PENALTIES

68. Respondent agrees to pay a civil penalty in the amount of **\$5,000** in settlement of the alleged violations, which Respondent agrees to pay in accordance with the terms set forth

By

below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the executed and filed CAFO. 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 the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.

69. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 3008(a) of RCRA for the violations alleged in this CAFO.
 70. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent, as follows:
 - a. Health Chem Corporation and subsidiaries Federal Income Tax Returns for 2008, 2009 and 2010;
 - b. Hercon Laboratories Corporation Pennsylvania Corporate Tax report for 2008 and 2009;
 - c. Health Chem Corporation and subsidiaries Income Statements for the years 2008, 2009, 2010 and 2011 through August 31, 2011;
 - d. Health Chem Corporation and subsidiaries Balance Sheets for the years 2008, 2009, 2010 and 2011 through August 31, 2011;
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e. The "Financial Statement of Corporate Debtor" for Hercon Laboratories Corporation, signed by Ronald Burghauser, Chief Financial Officer, Hercon Laboratories Corporation.

71. In reliance upon the financial information identified in Paragraph 70, immediately above, and based upon an analysis of the same and in consideration of the penalty criteria set forth in EPA's RCRA Penalty Policy, which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), Complainant has concluded that Respondent has established that it is unable to pay a civil penalty in excess of the amount of **\$5,000.00** in settlement of the above-captioned action.

72. The civil penalty of **\$5,000.00** in Paragraph 68, above, may be paid in four (4) installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

a. 1st Payment: The first payment in the amount of \$1,250 shall be paid 30 days after the Effective Date of the Final Order;

b. 2nd Payment: The second payment in the amount of \$1,268.96.00 plus interest, consisting of a principal payment of \$1,250.00 and an interest payment of \$18.96, shall be paid 180 days after the Effective Date of the Final Order;

c. 3rd Payment: The third payment in the amount of \$1,262.81 payment plus interest, consisting of a principal payment of \$1,250.00 and an interest payment of \$12.81, shall be 365 days after the Effective Date of the Final Order;

d. 4th Payment: The fourth and final payment in the amount of \$1,256.32 payment plus interest, consisting of a principal payment of \$1,250.00 and an interest payment of \$6.32, shall be 545 days after the Effective Date of the Final Order.

73. Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of \$5,000.00 and total interest payments in the amount of \$38.09.

74. By the signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal

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liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.

75. Payment of the civil penalty amount assessed above in Paragraph 68 shall be made either 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 of this action, RCRA-03-2012-0129;

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:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell 513-487-2063

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 and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

E. Payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-001

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

G. All electronic payments made through the Automated Clearing House (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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field, open form and complete the required fields

76. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

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

MB

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

77. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
78. 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 as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
79. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the executed and filed 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).
80. 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 Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. 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).

IV. EFFECT OF SETTLEMENT

81. Payment of the penalty specified in Paragraph 68 above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g), for the specific violations alleged in Counts I through VI, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

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V. RESERVATION OF RIGHTS

82. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. 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 the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

VI. OTHER APPLICABLE LAWS

83. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. CERTIFICATION OF COMPLIANCE

84. As to all relevant provisions of RCRA Subtitle C, 42 U.S.C. §§ 6901 *et seq.*, and the Commonwealth of Pennsylvania's federally authorized hazardous waste management program allegedly violated as set forth in at 25 Pa Code §§ 260a.1 *et seq.* Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all such relevant provisions and regulations.

VIII. PARTIES BOUND

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

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IX. EFFECTIVE DATE

86. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Hercon Laboratories Corporation:

Date: 3/8/12

By: Ronald J. Burghauer

Name: Ronald Burghauer
Title: Chief Financial Officer
Hercon Laboratories Corporation

For Complainant, United States Environmental Protection Agency, Region III:

Date March 8, 2012

By: Joyce A. Howell
Joyce A. Howell
Senior Assistant Regional Counsel

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

Date 3/20/12

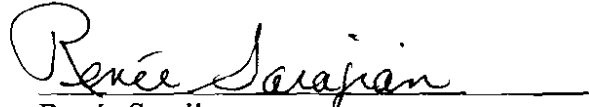
By: Abraham Ferdas
Abraham Ferdas
Director
Land and Chemicals Division

ROB

Consent Agreement, that the penalty agreed to therein by the parties is based on a consideration of the factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), it is hereby ordered that Respondent pay \$5,000.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

The effective date of this Consent Agreement and Final Order is the date on which such Final Order is filed with the Regional Hearing Clerk.

3/30/12
Date


Renée Sarajian
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

In the Matter of: :
: Hercon Laboratories Corporation :
: Respondent, :
: EPA Docket No. RCRA-03-2012-0129 :
Hercon Laboratories Corporation :
101 Sinking Springs Lane :
Emigsville, PA 17318 :
: Proceeding under Section 3008(a) :
: of the Resource Conservation and :
: Recovery Act, as amended, 42 U.S.C. :
: Section 6928(a) :
Facility. :

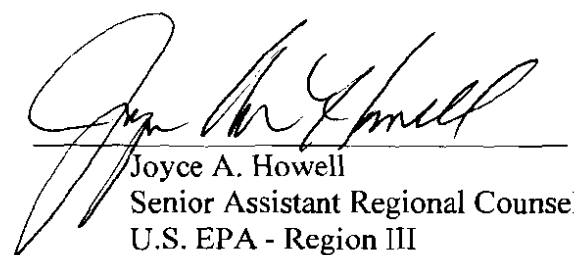
CERTIFICATE OF SERVICE

I certify that I sent by UPS, next day delivery, a copy of the Consent Agreement and Final Order to the addressee listed below. The original and one copy of the Consent Agreement and Final Order, were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

RECEIVED
2012 MAR 30 PM 2:14
REGIONAL HEARING CLERK
EPA REGION III
PHILADELPHIA PA

Ronald Burghauer
CFO
Hercon Laboratories Corporation
101 Sinking Springs Lane
Emigsville, PA 17318

Dated: 3/30/2012


Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029


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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
IMO Hercon Laboratories Corporation
Docket No. RCRA-03-2012-0129

FROM: Abraham Ferdas, Director
Land and Chemicals Division



 Marcia E. Mulkey
Regional Counsel

TO: Renée Sarajian
Regional Judicial Officer

The attached Consent Agreement and Final Order both commences and concludes a matter brought against Hercon Laboratories Corporation, for violations of certain provisions of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the Commonwealth of Pennsylvania's federally authorized hazardous waste management program. These violations were identified through an EPA inspection on March 2, 2011.

The attached Final Order directs Respondent to pay a civil penalty in the amount of \$5,000.00. The aforesaid settlement amount was based upon Complainant's consideration of Respondent's ability to pay a penalty as well as the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. 6928(a) Section 3008(a)(1) and (g), and EPA's June 2003 RCRA Civil Penalty Policy.

We recommend that you sign the attached Final Order. After you execute the Final Order, please return the documents to Joyce Howell, x2644, for further processing.

Attachments

cc: Joyce Howell
Ronald Burghauer

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

2012 MAR 30, PM 2:20

RECEIVED