

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 N. 5TH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

Cambrex Charles City, Inc. )  
1205 11<sup>th</sup> Street )  
Charles City, Iowa 50616 )

) Docket No. RCRA-07-2005-0395

EPA ID#IAD984591891 )

) **CONSENT AGREEMENT**  
) **AND FINAL ORDER**

) Respondent. )  
)  
)

**I. PRELIMINARY STATEMENT**

This proceeding was initiated on or about September 28, 2005, when the United States Environmental Protection Agency, Region VII (Complainant or EPA) issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to Cambrex Charles City, Inc. (Cambrex or Respondent), owner and operator of a manufacturing facility that produces active pharmaceutical intermediates used by other pharmaceutical companies to manufacture their products. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of Section 3005 of RCRA. The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is

the result of such negotiations and resolves the liability of Respondent for matters alleged in the Complaint. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 Code of Federal Regulations (C.F.R.) Part 22 (Consolidated Rules of Practice).

## **II. CONSENT AGREEMENT**

1. Respondent and Complainant agree to the terms of the Consent Agreement portion of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order. The terms of this Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and its right to appeal the Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order settles all civil administrative claims for the RCRA violations alleged in the Complaint. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other provision of RCRA or other applicable law.

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

8. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$15,345.00 as set forth in Section III.A. of the Final Order. In addition, Respondent shall perform the Supplemental Environmental Project (SEP) as set forth in Paragraphs 9 through 18 below. The projected cost of the SEP is \$90,885.00.

#### **A. Supplemental Environmental Project**

9. Respondent shall perform a Supplemental Environmental Project (SEP) as part of the settlement of this matter. Specifically, Respondent shall install a secondary containment dike for bulk storage tanks and a tank truck loading and unloading containment pad and associated equipment, for the purpose of containing any spills while loading and unloading product and waste at Respondent's facility. The secondary containment dike will service Respondent's

incoming product tanks. The truck containment pad will service both the new secondary containment dike and the existing hazardous waste accumulation tank designated as tank T-2115.

10. To the extent not already completed, within fourteen (14) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit its final SEP work plan to EPA's representative identified in Paragraph 23 below. The SEP work plan shall contain a detailed description of work done to date, a description of work to be done to complete the SEP, a schedule for the remaining work, and documentation demonstrating that the work to be performed conforms to applicable federal, state, and local environmental and health and safety requirements. The SEP work plan shall specifically include a SEP project completion date, which shall be no later than 180 days of the effective date of this Consent Agreement and Final Order.

11. The total expenditure for the SEP shall not be less than \$90,885.00, as specified in the SEP Work Plan. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report required in Paragraph 12.

12. Respondent shall provide a SEP Completion Report within forty-five (45) days of the date of completion of the SEP project set forth in the SEP work plan. The SEP Completion Report shall be submitted to EPA's representative identified in Paragraph 23 below and shall include:

- a. a statement of the actual costs of performing the SEP as outlined in the SEP Work Plan;
- b. documentation demonstrating the SEP expenditures;

c. a detailed discussion of how the SEP was implemented and the effectiveness of the SEP project; and

d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order. The certification provided under this subparagraph shall contain a specific statement that Respondent has not and will not deduct any portion of the expenditures for the SEP from federal, state, or local taxes.

e. Deadlines established herein for SEP deliverables may be extended by written agreement of the parties.

13. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 16.d. below.

14. After receipt of the SEP Completion Report described in Paragraph 12 above, EPA's representative will do one of the following:

a. notify Respondent in writing of any deficiencies in the SEP Completion Report, in which case Respondent shall have an additional thirty (30) days to correct any deficiencies;

b. inform Respondent that the project has been satisfactorily completed; or

c. determine that the project has not been completed satisfactorily and seek stipulated penalties pursuant to Paragraph 16.a. below.

15. If Respondent receives notice that the SEP Completion Report is deficient pursuant to Paragraph 14.a., Respondent shall correct the deficiencies and re-submit the report within the

thirty (30) day time period. If, upon resubmission, the deficiencies identified in the SEP Completion Report have not been corrected, EPA reserves the right to determine that the project has not been completed satisfactorily and to seek stipulated penalties pursuant to Paragraph 16.a. below.

16. Respondent shall pay stipulated penalties as follows:

a. For failure to satisfactorily complete the SEP in accordance with the provisions of this Consent Agreement relating to the performance of the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of \$45,702.00.

b. If the SEP is completed in accordance with the provisions of this Consent Agreement, but Respondent fails to expend at least 90 percent of the amount of money which was required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of \$9,140.00.

c. If the SEP is completed in accordance with this Consent Agreement and Respondent spends at least 90 percent of the money required to be spent on the SEP, Respondent shall not be liable for any stipulated penalties.

d. For failure to timely submit the SEP Completion Report required by Paragraph 12 of this Consent Agreement, Respondent shall pay a stipulated penalty in the amount of \$500.00 per day for each day after the report is due, until the report is finally submitted.

e. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

17. By its signature below, Respondent certifies that no portion of Respondent's expenditures on the SEP project required under this Consent Agreement and Final Order shall be claimed by the Respondent as a deduction for federal, state, or local income tax purposes.

18. Respondent agrees that in any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, Respondent will include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act.

#### **B. Effective Date/Penalties/Certification**

19. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

20. Respondent understands that failure to comply with the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$ 32,500 per day of non-compliance.

21. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

#### **III. FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

**A. Payment of Civil Penalty**

22. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$15,345.00.

23. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk  
U.S. EPA Region VII  
c/o Mellon Bank  
PO Box 371099M  
Pittsburgh, PA 15251.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Belinda Holmes  
Office of Regional Counsel  
U.S. EPA Region VII  
901 N. 5th Street  
Kansas City, Kansas 66101

and to:

Larry Mullins ARTD/RESP  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

For purposes of any other submissions or notices required pursuant to this Consent Agreement and Final Order, Mr. Mullins is designated as the Complainant's representative.

24. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of two percent (2%) per annum.

25. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Parties Bound**

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

#### **C. Reservation of Rights**

27. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$32,500 per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

28. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.

29. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of

action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

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

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

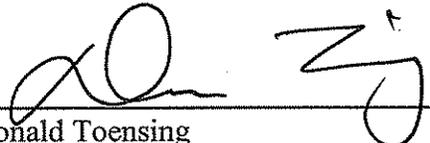
#### **D. Termination**

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

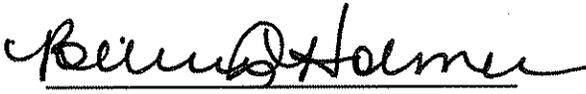
COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

7-12-06  
Date

  
\_\_\_\_\_  
Donald Toensing  
Chief  
RCRA Enforcement and State Programs Branch  
Air, RCRA, and Toxics Division  
U.S. Environmental Protection Agency  
Region VII

7/12/06  
Date

  
\_\_\_\_\_  
Belinda Holmes  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

In the matter of Cambrex Charles City, Inc.  
Page 12

RESPONDENT:  
Cambrex Charles City, Inc.

July 6, 2006  
Date

Signature 

Printed Name Peter E. Thauer

Title Vice President

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick  
Regional Judicial Officer

Date July 13, 2006

IN THE MATTER OF Cambrex Charles City, Inc., Respondent  
Docket No. RCRA-07-2005-0395

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Belinda Holmes  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mary E. Fletcher, Esq.  
Counsel  
Cambrex Charles City, Inc.  
C/o Cambrex Corporation  
One Meadowlands Plaza, 15<sup>th</sup> Floor  
East Rutherford, New Jersey 07073

Copy by Facsimile and  
First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20460

and

The Honorable Carl C. Charneski  
Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20460

Dated: 7/14/06

  
Kathy Robinson  
Regional Hearing Clerk