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U.S. EPA REGION IX  
REGIONAL HEARING CLERK

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**In the Matter of:**

**Sheridan C. Randolph  
Harry L. Randolph**

**Respondents.**

U.S. EPA Docket No.

RCRA-9-2007- 0003

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.13 & 22.18

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondents are Sheridan C. Randolph and Harry L. Randolph. The Facility is Acme Galvanizing Company ("Facility"), EPA ID. No. CAD009108861.
2. The owners of the Facility are Respondent, Sheridan C. Randolph, 3564 Gresham Court, Pleasanton, CA 94588 (2/3 interest) and her brother, Thomas J. Collins, 386 13<sup>th</sup> Street, Montara, CA 94037 (1/3 interest). They currently lease the property to a sewer pipe lining business. The operator of the Acme Galvanizing Company Facility was Respondent, Harry L. Randolph, the husband of owner, Sheridan C. Randolph. Mr. Randolph was also vice president of Acme Galvanizing Company. Mr. Randolph personally supervised operations at the Facility, including hazardous waste operations. In addition to being the part owner of the Facility, Sheridan C. Randolph was also the president of Acme Galvanizing Company.

3. The Facility is located at 1655 17<sup>th</sup> Street, Oakland, California, and was a zinc metal galvanizing facility. The Facility was operated as a galvanizing facility from 1959 to May 2000 by Acme Galvanizing Company. As of May 2000, Acme Galvanizing Company ceased all metal galvanizing operations at the Facility. Under the supervision of EPA, Acme Galvanizing Company: (a) completed a site cleanup, involving removal of all existing surface waste, drums, tanks, vaults and other structures, including all metal plating process equipment; (b) conducted surface and subsurface soil sampling, testing, analysis, and reports; and (c) installed groundwater monitoring wells and provided water sampling, testing analysis and reports. Acme Galvanizing Company and Respondents claim to have incurred costs and expenses for all of the foregoing work in excess of \$300,000.00. Acme Galvanizing Company, a California Corporation, has been dissolved, according to California Secretary of State records.
4. During its operation, the Acme Galvanizing Company generated various hazardous wastes including spent sulfuric acid having the characteristic of corrosivity (D002) and containing chromium (D007) and lead (D008). In addition, cadmium (D006) has been found in the soils within the Facility.
5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. § 22.13(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondents violated state regulations adopted pursuant to the approved California hazardous waste management program.<sup>1</sup> In particular, Respondents stored hazardous waste without a permit in violation of 22 California Code of Regulations ("CCR") § 66270.1(c), [see also 40 C.F.R. § 270.1(c)]; failed to maintain containers of hazardous waste to avoid leakage in violation of 22 CCR § 66265.173 [see also 40 C.F.R. 265.173]; failed to maintain and operate a facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 22 CCR § 66265.31 [see also 40 C.F.R. § 265.31]; and failed to make adequate hazardous waste determinations in violation of 22 CCR § 66262.11 [see also 40 C.F.R. § 262.11].

**B. JURISDICTION**

6. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code ("Cal. H&S Code"), and the regulations

<sup>1</sup> All citations to the "CCR" refer to the current California Code of Regulations, which are contained in the California State Health and Safety Code, Division 20 and Title 22 Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (see 57 Fed. Reg. 32726 (July 23, 1992)) and as amended at 66 Fed. Reg. 49118 (September 26, 2001). Federal regulations that correspond to the federally enforceable state regulations are noted in brackets after the state regulatory citations.



promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 CCR §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.

7. Respondents are "persons" as defined in 22 CCR § 66260.10. [See also 40 C.F.R. § 260.10].
8. Thomas J. Collins and Respondent, Sheridan C. Randolph, are "owners" as defined in 22 CCR § 66260.10. [See also 40 C.F.R. § 260.10].
9. Respondent Harry L. Randolph is an "operator" as defined in 22 CCR § 66260.10. [See also 40 C.F.R. § 260.10].
10. Respondent operator and vice president of Acme Galvanizing, Harry L. Randolph, and Respondent owner and president of Acme Galvanizing, Sheridan C. Randolph are "generators" of hazardous waste as defined in 22 CCR § 66260.10. [See also 40 C.F.R. § 260.10].
11. Respondents generated materials that are "wastes" as defined in 22 CCR §§ 66260.10 and 66261.2. [See also 40 C.F.R. §§ 260.10 and 261.2]. Respondents are, therefore, subject to the State regulations adopted pursuant to 22 CCR §§ 66001 *et seq.* [See also Sections 3001, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6921, 6924 and 6925, and regulations adopted pursuant thereto].
12. At the Facility, Respondents generated a number of "hazardous wastes" as defined in Cal. H&S Code § 25117, and 22 CCR §§ 66260.10 and 66261.3. [See also RCRA Section 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to D002 - sulfuric acid, D006 - cadmium, D007-chromium, and D008 - lead. The Facility also generated state-regulated wastes including zinc.
13. On April 20 and 21, 2000, EPA conducted a hazardous waste inspection at the Facility. Based upon the findings EPA made during the hazardous waste inspection, and additional information obtained subsequent to those inspections, EPA alleges that Respondents violated California Health & Safety Code §§ 25100 *et seq.*, and the regulations adopted pursuant thereto, as approved and authorized by the United States.
14. On July 22, 2002, EPA conducted a hazardous waste inspection at the Facility. Based upon the findings EPA made during the hazardous waste inspection, and additional information obtained subsequent to those inspections, EPA alleges that Respondents violated California Health & Safety Code §§ 25100 *et seq.*, and the regulations adopted pursuant thereto, as approved and authorized by the United States.
15. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a

violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

16. A violation of California's authorized hazardous waste program, found at Cal. H&S Code §§ 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
17. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*.
18. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. **ALLEGED VIOLATIONS**

**COUNT I**  
**Storage of a Hazardous Waste**  
**Without a Permit or Interim Status**

19. 22 CCR § 66270.1(c) requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste." [See also 40 C.F.R. § 270.1(c)].
20. 22 CCR § 66262.34(a) provides that a generator of hazardous waste may accumulate hazardous waste on site for 90 days or less, without a permit, provided the generator complies with the applicable regulatory requirements found in 22 CCR § 66262.34.
21. Generators who accumulate hazardous waste on site without a permit must comply with the following labeling requirements:
  - a. The date for which the accumulation period begins must be clearly marked on the tank or container.
  - b. Each container and tank used for onsite accumulation of hazardous waste must be labeled with the words, "hazardous waste,"



- c. All containers and portable tanks shall be labeled with the composition and physical state of the wastes, a statement which calls attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.), and the name and address of the person producing the waste.

22 CCR §§ 66262.34(a)(2), 66262.34(f)(3).<sup>2</sup>

22. 22 CCR § 66262.34(a) provides that a generator of hazardous waste may accumulate hazardous waste on site for a limited period of time, without a permit, provided the generator complies with various regulatory requirements, including but not limited to the requirement that the waste is placed in containers or tanks and complies with the applicable container or tank requirements pursuant to 22 CCR § 66262.34(a)(1)(A) [see also 40 C.F.R. § 262.34(a)(1)].
23. Applicable container regulations include the requirement that the owner or operator maintain the container in good condition and that the hazardous waste contents of a leaking container be transferred to a container in good condition. 22 CCR § 66262.171 [40 C.F.R. § 265.171]. Also, a container holding hazardous waste must always be closed during storage except for when it is necessary to add or remove waste. 22 CCR § 66265.173 [40 C.F.R. § 265.173].
24. During the April 20-21, 2000 inspection, EPA inspectors found that the 1,000 gallon evaporation storage and treatment container was corroded and leaking on the floor. Additionally, it had no labels. During the July 22, 2002 inspection, EPA inspectors found that Respondents had stored D002, D007 and D008 onsite in the 1,000 gallon unlabeled leaking open evaporator container since at least the closing of the facility in August 2000. The Respondents, who had no permit, were not in compliance with the container requirements of 22 CCR § 66262.34(a)(1)(A) and the labeling requirements of 22 CCR §§ 66262.34(a)(2) & 66262.34(f).
25. Through information acquired subsequent to the April 20-21, 2000 EPA inspection, EPA inspectors found that Respondents stored D002 acid waste on-site greater than 90 days. Respondents were storing the D002 waste at the time the facility was closed in August 2000 and continued storing it through March 2001 when the waste was finally manifested and shipped to an off-site disposal facility.
26. Therefore, EPA alleges that Respondents stored hazardous wastes at the facility without a permit in violation of 22 CCR § 66270.1(c) [40 C.F.R. § 270.1]. Because the 1,000

<sup>2</sup> There is no federal regulation analogous to 22 CCR § 66262.34(f)(3)(A)(B) or (C). 40 C.F.R. § 262.34(a)(2) and (a)(3) or (c)(1)(ii), while analogous to 22 CCR § 66262.34(f), does not contain the subsections (A) (B) or (C) which are present in the state requirement. These subsections make the state's requirement more stringent than the federal counterpart and is enforceable by EPA because the state's program has been authorized to act in lieu of the federal program. (See 57 Fed. Reg. 32726 (July 23, 1992)).

gallon evaporation container remained unlabeled and continued to leak from the date of the first inspection, April 20-21, 2000 to the second inspection on July 22, 2002, the failure to store hazardous wastes without permit was a continuing violation.

## **COUNT II**

### **Failure to Maintain a Facility**

27. 22 CCR § 66265.31 requires the owner or operator of a facility to maintain and operate a facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [See also 40 C.F.R. § 265.31].
28. During the April 20-21, 2000 inspection, EPA inspectors found that the 1,000 gallon evaporation container was corroded and leaking down the sides of the container and onto the floor. During the July 22, 2002 inspection, inspectors found that the 1,000 gallon evaporator container holding hazardous wastes (D002, D007, D008) was still leaking on the floor of the facility and posed a threat to human health.
29. Through information acquired subsequent to the April 20-21, 2000 EPA inspection, EPA inspectors found that Respondents stored D002 acid waste on-site from the time when the facility was closed in August 2000 through March 2001 when the waste was finally manifested and shipped to an off-site disposal facility.
30. Therefore, EPA alleges that Respondents failed to maintain and operate the facility in violation of 22 CCR § 66265.31. The violation is a continuing violation for the time period beginning on the first day of the April 20-21, 2000 inspection and continuing through the July 22, 2002 inspection.

## **COUNT III**

### **Failure to Conduct Adequate Hazardous Waste Determinations**

31. 22 CCR § 66262.11 requires a generator of a solid waste to adequately determine whether the waste is hazardous. [See also 40 C.F.R. § 262.11]
32. During the April 20-21, 2000 inspection, Respondent Harry Randolph claimed that the spent metal galvanizing acids and the iron salts left behind from the evaporation of spent acids were not RCRA hazardous wastes. However, Respondent did not produce any



analytical results for pH or chromium in the spent acids or for chromium in the iron salts. There was no indication during the July 22, 2002 inspection that the Respondents had modified their sampling to include analyses for chromium and pH, despite the fact that EPA had conducted such sampling and analysis as part of its April 20-21, 2000 inspection and shared its results with the Respondents.

33. Respondents failed to make adequate hazardous waste determinations of its spent acids and iron salts in violation of 22 CCR § 66262.11. Respondents' failure to comply with this requirement was a repeat violation, having occurred at the first inspection in April 2000 and at the July 2002 inspection.

#### **COUNT IV** **Failure to Manage Containers**

34. 22 CCR § 66265.173 requires containers holding hazardous wastes to be closed during transfer and storage except when necessary to add or remove waste. [See also 40 C.F.R. § 265.173] Additionally, a container holding hazardous waste shall not be opened, handled, transferred or stored in a manner which may rupture the container and cause it to leak. *Id.*
35. During the April 20-21, 2000 inspection, EPA inspectors found that the 1,000 gallon evaporation storage and treatment container was open, corroded and leaking on the floor. During the July 22, 2002 inspection, EPA inspectors found that Respondents had stored D002, D007 and D008 onsite in the 1,000 gallon unlabeled leaking open evaporator container since at least the closing of the facility in August 2000.
36. Therefore, EPA alleges that Respondents failed to properly maintain containers at the facility in violation of 22 CCR § 66265.173. Respondents' failure to comply with the container management requirements was a continuing violation beginning April 20, 2000 and continuing through July 22, 2002.

#### **D. CIVIL PENALTY**

37. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, see 61 Fed. Reg. 69360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*, occurring on or after January 31, 1997 but before March 16, 2004, and a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*, occurring after March 15, 2004. Based upon the facts alleged herein, upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) and upon the RCRA Civil Penalty Policy, including prior cooperation by the Respondents, EPA proposes that Respondents be assessed: **THREE**

**THOUSAND DOLLARS (\$3,000.00)** as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the RCRA Civil Penalty Policy, as adjusted by the Debt Collection Improvement Act and an analysis of Respondents' ability to pay.

**E. INSTITUTIONAL CONTROLS AND COMPLIANCE TASKS**

38. Respondent owner, Sheridan C. Randolph agrees not to transfer, assign or sell her interest in the Facility prior to the recording of a covenant running with the land for the property at 1655 17th Street, Oakland, California by the owners prohibiting residential use of the property at any time in the future by all future owners and tenants, as described herein. Alternatively, as a condition of sale, Respondent owner, Sheridan C. Randolph, shall require the purchaser to record the covenant as a condition of the sale of the property within 180 days of the closing date. In the event of the latter alternative, Respondent owner, Sheridan C. Randolph shall provide EPA with a copy of the purchase sale agreement no later than twenty (20) days before closing. The covenant that the owners or purchaser records shall be materially similar to the sample covenant attached hereto as Exhibit 1. In the event that the language of the covenant to be recorded by the owners deviates materially from the language of the sample Covenant, Respondent shall obtain written approval from EPA before recording the Covenant. If the Respondent chooses to sell the property subject to the requirement in the purchase sale agreement to record the covenant, the purchase sale agreement shall also include a provision requiring the purchaser to obtain permission from EPA in the event that the covenant to be recorded differs materially from the one attached to hereto as Exhibit 1. The covenant will be subject to removal provided that the property is cleaned to residential standards in compliance with all applicable state and federal laws existing at the time. Notwithstanding anything contained in this CA/FO to the contrary, *IF* (a) the Respondent chooses to sell the property subject to a requirement set forth in the purchase sale agreement that purchaser shall record the covenant within 180 days of the closing date, (b) the purchase sale agreement also includes a provision requiring the purchaser to obtain permission from EPA in the event that the covenant to be recorded differs materially from the one attached to hereto as Exhibit 1, and (c) the Respondent provides a copy of the purchase and sale agreement to the EPA at least 20 days prior to the closing date, and the EPA does not make a written objection thereto delivered to Respondent at least 5 days prior to the closing date, *THEN* Respondent shall be deemed to have satisfied in full all requirements in this CA/FO with respect to the covenant, and in no event shall Respondent, or any of them, be liable or responsible or in violation of this CA/FO for any failure of purchaser to in fact record the covenant as required in the purchase and sale agreement, EPA's sole recourse being against purchaser, and, upon request, Respondent



shall assign all of its rights to enforce the foregoing provisions set forth in the purchase sale agreement to EPA.

39. Respondent owner, Sheridan C. Randolph shall install, or shall arrange for her tenant/purchaser to install a concrete or asphalt cap or floor over all exposed soil remaining within the main building at 1655 17th Street, Oakland California before sale of the property, which is currently in escrow. Within sixty (60) days of the date of the Final Order in this action, Respondent owner, Sheridan C. Randolph or her tenant/purchaser shall submit to EPA a proposal for installation of the concrete or asphalt floor to cover all exposed surface soil within the entire building as depicted in Exhibit 2. The floor shall be capable of providing adequate structural support for anticipated surface loading and shall be designed and installed to resist cracking over time. The proposal shall include at a minimum the following information:

- a. Identification of the entire area to be covered;
- b. a brief description of the proposed construction materials and the structural design of the floor;
- c. an assessment of how the floor will satisfy the conditions set forth above in this section; and
- d. a time schedule for installing the floor.

Within 180 days of approval by EPA of the proposal, or by the closing date on the sale of the property, whichever is sooner, Respondent will install the floor or will arrange for her tenant/purchaser to install the floor pursuant to the terms set forth in the proposal. Respondent shall send submittals and certification of compliance for the above work by hand delivery, overnight mail, or certified mail to:

Cameron McDonald (WST-3)  
Waste Management Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street

#### **F. ADMISSIONS AND WAIVERS**

40. Respondents admit and agree that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondents pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondents admit to the jurisdictional allegations of facts and law set forth in Section B of this CA/FO. Respondents consent to and agree not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondents will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

41. This CA/FO and Respondents' compliance with it shall not be construed as an admission by Respondents of any wrongdoing or liability. Respondents hereby waive any rights Respondents may have to contest the allegations set forth in this CA/FO, with respect to the EPA, and, with respect to this proceeding, waive any rights Respondents may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and hereby consent to the issuance of this CA/FO without adjudication. In addition, Respondents hereby waive any rights Respondents may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

**G. PARTIES BOUND**

42. This CA/FO shall apply to and be binding upon Respondents and their agents, successors and assigns and upon all persons acting under or for Respondents, until such time as the civil penalty required under Section D has been paid in accordance with Section H, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations of federal and authorized state requirements alleged herein.
43. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondents' obligations and responsibilities under this CA/FO.
44. Respondents shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of Facility, and shall notify EPA within seven (7) calendar days prior to such transfer, until the termination of this CA/FO.

**H. PAYMENT OF CIVIL PENALTY**

45. Respondents consent to the assessment of and agree to pay a civil penalty of **THREE THOUSAND DOLLARS (\$3,000.00)** in full settlement of the federal civil penalty claims set forth in this CA/FO.
46. Respondents shall submit payment of the civil penalty in the amount of **THREE THOUSAND DOLLARS (\$3,000.00)** within thirty (30) calendar days of the Effective Date of this CA/FO. Payment shall be made by Electronic Funds Transfer to:



Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

Alternatively, Respondents may pay with a certified or cashier's check to "Treasurer of the United States" which shall be remitted to:

U.S. Environmental Protection Agency  
Region 9  
P.O. Box 371099M  
Pittsburgh, PA 15251

47. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondents' name and address, and the EPA docket number of this action. At the time payment is made, Respondents shall send a copy of the payment transmittal to:

Danielle Carr (ORC-1)  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and to:

Cameron McDonald (WST-3)  
Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

48. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondents further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

**I. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

49. In the event Respondents fail to meet any requirement set forth in this CA/FO, Respondents shall pay stipulated penalties as set forth below.
50. For failure to submit a payment to EPA or to perform by the time required by this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteen day of delay; ONE THOUSAND DOLLARS (\$1000) per day for the sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
51. All penalties shall begin to accrue on the date that payment or performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
52. All penalties owed to EPA under this Section shall be due within thirty (30) calendar days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
53. Payment shall be made by certified or cashier's check to "Treasurer of the United States" and shall be remitted to:
- U.S. Environmental Protection Agency  
Region 9  
P.O. Box 371099M  
Pittsburgh, PA 15251
54. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondents' name and address, and the EPA docket number of this action. At the time payment is made, Respondents shall send a copy of the payment transmittal to:
- Danielle Carr (ORC-1)  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



and to:

Cameron McDonald (WST-3)  
Waste Management Division  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

55. The payment of stipulated penalties shall not alter in any way Respondents' obligation to complete the performance required hereunder.
56. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this CA/FO.

**J. RESERVATION OF RIGHTS**

57. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondents perform tasks in addition to those required by this CA/FO, except as to additional penalties for those alleged violations which are the subject matter of this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, except as to those alleged violations which are the subject matter of this CA/FO, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
58. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
59. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Respondents' liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.

60. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondents of any obligation to obtain and comply with any local, State or federal permits.

**K. OTHER CLAIMS**

61. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, 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 the Facility.

**L. MISCELLANEOUS**

62. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondents.
63. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
64. The Effective Date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

**IT IS SO AGREED.**

Date: 10-26-06

**SHERIDAN C. Randolph**

*Sheridan C. Randolph*

Date: 10-26-06

**HARRY L. Randolph**

*Harry L. Randolph*



Date:

12/6/06

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

A handwritten signature in dark ink, appearing to read "Jeff Scott", is written over a horizontal line.

Jeff Scott

Director

Waste Management Division

Region IX

**FINAL ORDER**

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. RCRA-9-2007-~~0063~~) be entered and that Sheridan C. Randolph and Harry L. Randolph pay a total civil penalty of **THREE THOUSAND DOLLARS (\$3,000.00)** within thirty (30) calendar days of the Effective Date of this Consent Agreement and Final Order. Payment shall be made by Electronic Funds Transfer to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

Alternatively, Respondents may pay with a certified or cashier's check to "Treasurer of the United States" and shall remit the check to:

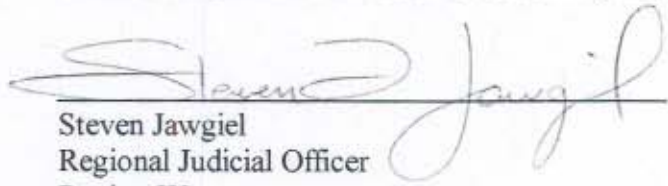
U.S. Environmental Protection Agency  
Region 9  
P.O. Box 371099M  
Pittsburgh, PA 15251

within thirty (30) calendar days after the Effective Date of this Consent Agreement and Final Order. A copy of the payment transmittal shall be sent to the EPA Region IX addresses specified in Section H of this Consent Agreement and Final Order within such 30-day period. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondents' name and address, and the EPA docket number of this action.

This Final Order shall be effective on the date upon which the Consent Decree and Final Order is filed with the Regional Hearing Clerk.

Date: 12/11/06

United States Environmental Protection Agency

  
Steven Jawgiel  
Regional Judicial Officer  
Region IX



## CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Sheridan C. Randolph and Harry L. Randolph  
3564 Gresham Ct.  
Pleasanton, CA 94588-3431

Steve Ledoux  
Ledoux Esquire Inc.  
Presidio of San Francisco  
38 Keyes Avenue, Suite 119  
PO Box 29426  
San Francisco, CA 94129

12-11-06

Date

Danielle E. Carr

Danielle Carr  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX