

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

In the Matter of:	:	
	:	
Atomized Materials Co., Inc.	:	
	:	
Respondent.	:	
	:	EPA Docket No. RCRA-03-2019-0069
Atomized Materials Co., Inc.	:	
205 Parks Road	:	U.S. EPA-REGION 3-RHC
McDonald, Pennsylvania, 15057	:	FILED-5JUN2019AM10:31
	:	
Facility.	:	Proceeding under Section 3008(a)
	:	of the Resource Conservation and
	:	Recovery Act, as amended, 42 U.S.C.
	:	Section 6928(a)
	:	

---

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director, Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Atomized Materials Co., Inc. (“Respondent”) pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act 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 and the accompanying Final Order (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) (“PaHWMR”) in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939 (g). 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 Section 3008(a) of RCRA, 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 Federal Regulations by reference. See 25 Pa. Code § 260a.3(e).

4. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) - (3) of the Consolidated Rules of Practice, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent by the issuance of a Consent Agreement and Final Order, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a), to resolve alleged violations of RCRA at Respondent's facility located at 205 Parks Rd., McDonald, Pennsylvania, 15057.

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

6. For purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 5, above.

7. 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.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

#### Notice of Action to the Commonwealth of Pennsylvania

11. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated May 7, 2018, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. 6928(a)(1),

authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

## **II. FINDINGS OF FACT AND ALLEGATIONS 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:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the Commonwealth of Pennsylvania.

14. Respondent is, and was at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 25 Pa. Code § 260a.10.

15. Respondent is, and at all times relevant to this Consent Agreement, was the “owner” and “operator” of a “facility”, described in Paragraph 16, below, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

16. The facility referred to in Paragraph 15, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a manufacturing facility located at 205 Parks Road, McDonald, Pennsylvania, 15057.

17. Respondent reports as a Large Quantity Generator of hazardous waste that generated more than 1,000 kilograms of hazardous waste per month at its Facility and does not have a RCRA Part B or any other environmental permit.

18. Respondent is assigned EPA ID No. PAD004375382.

19. Respondent was at all times relevant to this CAFO, 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 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, with the exception of the term “storage”, which is defined in 25 Pa. Code § 260a.10.

20. On August 29, 2017, a representative of EPA conducted a RCRA Compliance Evaluation Inspection (“RCRA CEI”) at the Facility.

21. On August 29, 2017, “hazardous wastes” generated by Respondent, identified below in Paragraphs 22 - 24 were in “storage” in containers at the Facility.

22. Respondent generates waste still bottoms from onsite solvent distillation at the Facility, which are hazardous wastes (EPA Hazardous Waste No. D001, D035, F003, and F005) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.24 because it exhibits the characteristics of ignitability.

23. Respondent generates waste paint related material, primarily methanol that is used for a silicone precipitation process until it is deemed a hazardous waste (D001) and sample retains (D001, D035) of product samples of manufacturing batches kept for two to three years

by the Respondent at the Facility, within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.24, because it exhibits the characteristic of ignitability.

24. Respondent generates solvent contaminated wipes at the Facility, which is a hazardous waste (EPA Hazardous Waste No. D001) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.24, because it exhibits the characteristic of ignitability.

25. On July 27, 2018, EPA sent to Respondent an Opportunity to Show Cause letter, advising Respondent of certain alleged violations of RCRA Subtitle C based upon the RCRA CEI and this Consent Agreement resolves those alleged violations.

#### COUNT I

(Operating a Treatment, Storage or Disposal Facility Without a Permit or Interim Status)

26. The preceding paragraphs are incorporated by reference.

27. 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.

28. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(4) and by further reference, the personnel training requirements of 40 C.F.R. § 265.16, provides, in pertinent part, that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status in containers provided that facility personnel take part in an annual review of the initial hazardous waste training as provided by 40 C.F.R. § 265.16(c).

29. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(4) and by further reference, the personnel training requirements of 40 C.F.R. § 265.16(d), provides, in pertinent part that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status in containers provided that the owner or operator maintain the following documents and records at the facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; and, (2) A written job description for each position listed under 40 C.F.R. § 265.16 (d)(1).

30. On August 29, 2017, Respondent accumulated hazardous waste in a container that was not properly labeled with the date upon which the period of accumulation began in violation of 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(2). Specifically,

with a start accumulation date as required by 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(2).

31. On August 29, 2017, Respondent failed to, except for one employee, provide any documents or records of Facility personnel annual hazardous waste training for 2016 or previous years in violation of 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. §265.16(c).

32. On August 29, 2017, Respondent failed to provide any documentation or records of job titles or job descriptions relating to the handling of hazardous waste or the name(s) of the employee(s) filling each job at the facility related to hazardous waste management in violation of 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. §265.16(d)(1) and 16(d)(2).

33. On August 29, 2017, Respondent accumulated hazardous waste in a container that was not labeled as "Hazardous Waste" as required by 25 Pa. Code § 265a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(3). Specifically, one 55-gallon container of hazardous waste solvent in the Cold Storage Area that contained hazardous waste was not marked or labeled "Hazardous Waste."

34. On August 29, 2017, Respondent failed to label as hazardous waste or other words that identified the contents of the container two satellite accumulation containers of hazardous waste as required by 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii). Specifically, one full 55-gallon container of hazardous waste solvent in the upper production area; and one partially-full 5-gallon container of hazardous waste still bottoms at the Facility distillation unit that was not labeled as hazardous waste or other words that identified the contents of the container.

35. 25 Pa. Code § 265a. which incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 265.174, which requires that at least weekly, the owner or operator must inspect areas where containers are stored. At the time of the inspection, the Facility, based on the Inspection Record, failed to conduct a weekly inspection for the week of August 13, 2017.

36. Respondent failed to qualify for the "less than 90-day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a) with exceptions not relevant herein, by failing to satisfy the conditions for such exemptions referred to in Paragraphs 27 - 30, above, and as described in Paragraphs 31 - 35, above, and therefore on August 29, 2017 violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.

COUNT II  
(Hazardous Waste Determination)

37. The preceding paragraphs are incorporated by reference.

38. Pa. Code § 262a.1, which incorporates by reference 40 C.F.R. §262.11, requires a person who generates solid waste shall determine if that waste is hazardous prior to disposal.

39. On August 29, 2017, EPA observed the following disposed items: (i) one spent aerosol can, in a box, under the stairs near the distillation unit that was labeled only as “Off Color”; (ii) one spent aerosol can of Fast Tack 87 General Purpose Adhesive atop a piece of equipment next to the roll-up door, near the cold storage area; and (iii) at least three 8’ long universal waste lamps in the roll-off container behind the manufacturing building’s eastern exit, below the upper production area.

40. On August 29, 2017, Respondent violated 25 Pa. Code § 262a.1, which incorporates by reference 40 C.F.R. § 262.40(c) by failing to determine if the waste mentioned in the paragraph above was hazardous prior to disposal.

COUNT III  
(Hazardous Waste Manifests)

41. The preceding paragraphs are incorporated by reference.

42. 25 Pa. Code § 262a.1, which incorporates by reference 40 C.F.R. §262.40(a), a generator must keep a copy of each signed manifest for three years or until he receives a signed copy from the designated facility which received the waste. The signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

43. On August 29, 2017, Respondent did not maintain and was unable to provide to EPA signed copies of the following two Hazardous Waste Manifests: (i) Uniform Hazardous Waste Manifest (“UHW”) #014596525JJK, accepted by the initial transporter on 2/08/2016; and (ii) UHW #015127466JJK, accepted by the initial transporter on 12/22/2015.

44. On August 29, 2017, Respondent violated 25 Pa. Code § 262a.1, which incorporates by reference 40 C.F.R. §262.40(a), by not keeping a copy of each signed manifest for three years or until he receives a signed copy from the designated facility which received the waste.

COUNT IV  
(Biennial Reports)

45. The preceding paragraphs are incorporated by reference.

46. 25 Pa Code § 262a.41, which incorporates by reference 40 C.F.R. §262.41, provides that any large quantity generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report that includes, among other things, a description, EPA hazardous waste number (from 40 CFR Part 261 subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a TSDF. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped to the PADEP by March 1 of each even numbered year.

47. Respondent was a large quantity generator of hazardous waste in calendar year 2015 because it generated more than 1,000 kilograms of hazardous waste per month at its Facility in calendar year 2015.

48. Respondent's Biennial Report submitted in 2016 for the 2015 operating year, failed to list D039 (tetrachloroethylene), and D040 (trichloroethylene), which had been manifested and shipped offsite as hazardous waste on 12/11/2015.

49. At the time of the CEI, Respondent violated 25 Pa Code §§ 262a.10 and 262a.41 by failing to file a complete Biennial Report for calendar year 2015.

COUNT V  
(Training)

50. The preceding paragraphs are incorporated by reference.

51. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c) requires Facility personnel to take part in an annual review of the initial training required in 40 C.F.R. § 264.16(a).

52. From January 1, 2013 to December 31, 2016, Respondent failed to provide an annual review of hazardous waste training to eight of nine employees at the Facility

53. From January 1, 2013 to December 31, 2016, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c) by failing to provide all Facility personnel with an annual review of the initial training required in 40 C.F.R. § 264.16(a).

COUNT VI  
(Job Titles)

54. The preceding paragraphs are incorporated by reference.

55. 25 Pa. § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), requires, *inter alia*, the owner or operator of a facility to maintain the following documents and records at the facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; and, 2) a written job description for each position listed under 40 C.F.R. § 264.16(d)(1).

56. On August 29, 2017, Respondent did not maintain at the Facility any documents or records relating to job titles or job descriptions for the facility personnel responsible for managing hazardous waste.

57. On August 29, 2017, Respondent violated 25 Pa. § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), by failing to maintain at the facility any documents or records relating to job titles or job descriptions for the facility personnel responsible for managing hazardous waste.

## COUNT VII

### (Keeping Containers Closed)

58. The preceding paragraphs are incorporated by reference.

59. 25 Pa. Code § 264a.1 incorporates by reference the Container Management requirements of 40 C.F.R. § 264.173(a), which requires that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

60. On August 29, 2017, the following open containers were at the Facility: (i) one partially full 55-gallon container of hazardous waste solvent and paint in the upper production area did not have a lid on it when waste was neither being added nor removed; (ii) one partially full 5-gallon container of collected hazardous waste still bottoms at the Facility distillation unit without a lid when waste was neither being added nor removed; (iii) one full 55-gallon container of hazardous waste near the Cold Storage Area that was not closed insofar as an open funnel was protruding from the 2" bung hole and the 3/4" bung hole was not plugged or covered when waste was neither being added nor removed; and (iv) one partially full 55-gallon container of "spent solvent to be distilled" in the Lab Garage area which was missing the 2" bung hold cover, when waste was neither be added nor removed.

61. On August 29, 2017, Respondent violated 25 Pa. Code § 264a.1 which incorporates by reference the Container Management requirements of 40 C.F.R. § 264.173(a) by having the containers mentioned in the above paragraph not closed when waste was neither being added nor removed at the Facility.

## COUNT VIII

### (Weekly Inspections)

62. The preceding paragraphs are incorporated by reference.

63. 25 Pa. Code § 264a.1 incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 264.174, which requires that at least weekly, the owner or operator must inspect areas where containers are stored.

64. At the time of the inspection, the Inspection Record provided to EPA by the Respondent indicated that the Respondent failed to conduct a weekly inspection for the week of August 13, 2017.

65. Respondent violated 25 Pa. Code § 264a.1 incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 264.174 by failing to conduct a weekly inspection of the areas where containers are stored at the Facility the week of August 13, 2017.

### **III. CIVIL PENALTIES**

66. Respondent agrees to pay a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) in settlement of the alleged violations set forth in this CAFO, which Respondent agrees to pay in accordance with the terms set forth 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.

67. The civil penalty of FIVE THOUSAND DOLLARS (\$5,000.00), set forth in Paragraph 66, above, shall be paid in five (5) installments in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of \$1,002.70, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- b. 2nd Payment: The second payment in the amount of \$1,002.70, shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- c. 3rd Payment: The third payment in the amount of \$1,002.70, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- d. 4<sup>th</sup> Payment: The fourth payment in the amount of \$1,002.70, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- e. 5th Payment: The fifth payment in the amount of \$997.69, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

68. Pursuant to the above schedule, Respondent will remit total payments of \$5,008.49, for the civil penalty in the amount of \$5,000.00 and for interest in the amount of \$8.49.

69. If Respondent fails to make timely payment of any one of the installment payments in accordance with the schedule set forth in Paragraph 67, above, the entire unpaid balance of the penalty and all accrued interest at the rate of one percent per annum (1%) become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late payment interest and penalty charges as described in Paragraphs 76 - 78 below, in the event of any such failure or default.

70. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

71. The aforesaid settlement amount was 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 reflects 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 also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* and the January 11, 2018 memorandum by EPA Assistant Administrator Susan Parker Bodine entitled *Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018)*.

72. Payment of the civil penalty as required by Paragraph 66, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 74 - 76, below, shall be made by either 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, *i.e.*, RCRA-03-2019-0069;

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

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

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Craig Steffen 513-487-2091

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

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1818

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

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

F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

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

G. On-Line Payment Option: [WWW.PAY.GOV/PAYGOV](http://WWW.PAY.GOV/PAYGOV)

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

H. Point of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):

Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>.

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:

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

and

Jeffrey S. Nast  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC40)  
1650 Arch Street  
Philadelphia, PA 19103-2029

73. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

74. 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.

75. 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.

76. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly. 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. RESERVATION OF RIGHTS**

77. 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. 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.

## **V. SCOPE OF SETTLEMENT**

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

## **VI. OTHER APPLICABLE LAWS**

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

## **VI. CERTIFICATION OF COMPLIANCE**

80. Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all applicable provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and the federally authorized PaHWMR, for which violations are alleged in this Consent Agreement.

## **VII. PARTIES BOUND**

81. 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.

## **VIII. EFFECTIVE DATE**

82. 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, Atomized Materials Co., Inc.

Date: 4/15/2019

By:   
\_\_\_\_\_  
Samuel E. Puglisi  
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: MAY 30 2019

By:   
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: 5/29/19

By:   
Jeffrey S. Nast  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III

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

In the Matter of:	:	
	:	
Atomized Materials Co., Inc.	:	
	:	
Respondent.	:	
	:	EPA Docket No. RCRA-03-2019-0069
Atomized Materials Co., Inc.	:	
205 Parks Road	:	
McDonald, Pennsylvania, 15057	:	
	:	
Facility.	:	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)
	:	

U.S. EPA-REGION 3-RHC  
FILED-5JUN2019AM10:31

**FINAL ORDER**

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Atomized Materials Co., Inc. (“Respondent”), have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with 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. § 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s October 1990 RCRA Civil Penalty Policy, as revised in June 2003 (“RCRA Penalty Policy”), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**NOW, THEREFORE, PURSUANT TO** Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) (“RCRA”), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment **\$5,000.00 (FIVE THOUSAND DOLLARS)**, in accordance with the payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

June 5, 2019  
Date:

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III

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

In the Matter of: :  
: :  
Atomized Materials Co., Inc. :  
205 Parks Road :  
McDonald, Pennsylvania, 15057 :  
Respondent. : EPA Docket No. RCRA-03-2019-0069  
: :  
: Proceeding under Section 3008(a)  
: of the Resource Conservation and  
: Recovery Act, as amended, 42 U.S.C.  
: Section 6928(a)

**CERTIFICATE OF SERVICE**

I certify that on JUN 05 2019, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

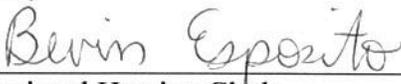
Copy served via UPS Overnight to:

Joseph Brendel  
Clark Hill PLC, One Oxford Centre  
301 Grant St, 14th Floor  
Pittsburgh, PA 15219  
jbrendel@clarkhill.com

Copy served via **Hand Delivery or Inter-Office Mail** to:

Jeffrey S. Nast, Sr. Assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: JUN 05 2019

  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 01 9177 5265