

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

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RECEIVED

In the Matter of:

Lancaster Aero Refinishers, Inc.
21850 County Road 56
Steamboat Springs, CO 80487

Respondent

Lancaster Aero Refinishers, Inc.
311 Airport Drive
Smoketown, PA 17576

Facility.

Docket No. RCRA-03-2013-0164

CONSENT AGREEMENT

**Proceeding under Section 3008(a) and
(g) of the Resource Conservation and
Recovery Act, as amended,
42 U.S.C. § 6928(a) and (g).**

I. PRELIMINARY STATEMENTS

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“Complainant” or “EPA”), and Lancaster Aero Refinishers, Inc. (“LAR” or “Respondent”), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as 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 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. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement (“CA”) and the accompanying Final Order (“FO”, collectively referred to herein as the “CAFO”) simultaneously commence and conclude this administrative proceeding against LAR.
3. The Pennsylvania Hazardous Waste Management Regulations (“PaHWR”), 25 Pa. Code, Chapters 260a - 270a, were authorized by EPA on January 30, 1986 and reauthorized by EPA, effective November 27, 2000 (65 Fed. Reg. 57,734 (September 26, 2000)),

effective March 22, 2004 (69 Fed. Reg. 2674 (January 20, 2004)) and effective June 29, 2009 (74 Fed. Reg. 19,453 (April 29, 2009)). The provisions of the authorized PaHWR, through such authorization, have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporate, with certain exceptions, the following federal hazardous waste management regulations: regulations in effect as of May 1, 1999 were incorporated under the November 27, 2000 PaHWR authorization; regulations in effect as of June 28, 2001 were incorporated under the March 22, 2004 PaHWR authorization; and regulations in effect as of October 12, 2005 were incorporated under the April 29, 2009 PaHWR authorization. *See* 25 Pa. Code § 260a. 3(e).
5. On August 14, 2012, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, giving Pennsylvania 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. GENERAL PROVISIONS

6. Respondent admits the jurisdictional allegations set forth in this CAFO.
7. Respondent neither admits nor denies the specific factual allegations set forth in this CA, except as provided in Paragraph 6, above.
8. Respondent neither admits nor denies the conclusions of law set forth in this CA, except as provided in Paragraph 6, above.
9. For the purposes of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of this CAFO.
10. For the purposes of this proceeding, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

III. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Complainant's allegations of fact and conclusions of law in accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
14. Respondent is a Pennsylvania corporation headquartered in Steamboat Springs, Colorado.
15. At the time of the violations alleged herein, Respondent provided refinishing and painting services to aircraft owners at its facility located in hangers E, F and N at 311 Airport Drive in Smoketown, Pennsylvania ("Facility").
16. Respondent is now and at the time of the violations alleged herein, Respondent was a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1), and 25 Pa. Code § 260a.10.
17. At the time of the violations alleged herein, the Facility was a hazardous waste "facility" as that term is defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1) and 25 Pa. Code § 260a.10.
18. At the time of the violations alleged herein, Respondent was the "owner" and "operator" of the Facility, as those terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1). On May 1, 2012, Respondent's status as owner and operator of the Facility ended after Respondent sold the Facility to a third party.
19. At the time of the violations alleged herein, Respondent was a "generator" of "solid waste" and "hazardous waste" at the Facility, as those terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1).
20. At the time of the violations alleged herein, Respondent was engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]", "tank[s]" and "tank system[s]" at its Facility, as the former term is defined in 25 Pa. Code § 260a.10 and as the latter terms are defined in 40 C.F.R. § 260.10 (as incorporated by reference in 25 Pa. Code § 260a.1).
21. On March 1, 2011, representatives from EPA conducted a compliance evaluation inspection at the Facility to assess Respondent's compliance with federally authorized PaHWR requirements.

COUNT I

(Operating a treatment, storage, or disposal facility without a permit/interim status)

22. The allegations of Paragraphs 1 through 21 of this CA are incorporated herein by reference.
23. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage, or disposal of hazardous waste unless such person has first obtained a permit for the facility or qualifies for interim status for such facility.
24. Respondent has never been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.70, at any time.
25. 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, provides, in pertinent part, that a generator of hazardous waste who accumulates hazardous waste in containers and tanks on-site for less than 90 days is exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of provisions set forth in that section, including, *inter alia*:
 - a. 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container; and
 - b. 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste."
26. From January 17, 2011 through September 22, 2011, Respondent was not in compliance with all of the conditions for the temporary accumulation of hazardous waste by a generator pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, and therefore did not qualify for the exemption from the permitting/interim status requirements provided by that section. Specifically, Respondent failed to qualify for the exemption in 40 C.F.R. § 262.34(a) in the following ways:
 - a. From January 17, 2011 to September 22, 2011, Respondent stored a spent etching/alodine conversion coat solution, which exhibited the toxicity characteristic for chromium (D007) and was a hazardous waste as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code

§ 260a.1, in a 350-gallon container and later in two 2,500 gallon tanks where it comingled with paint stripping waste streams. The comingled waste also exhibited the toxicity characteristic for chromium (D007) and was a hazardous waste as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1. As a result, Respondent stored characteristic (D007) chromium hazardous waste at the facility for greater than 90 days from April 18, 2011 (91 days after storage commenced) until September 22, 2011, and therefore failed to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a) for that time period;

- b. From January 17, 2011 to March 11, 2011, Respondent stored spent etching/alodine conversion coat solution combined with waste water, which exhibited the toxicity characteristic for chromium (D007) and was a hazardous waste as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, in a 350-gallon container in Hanger E without marking on the container the date upon which the accumulation of hazardous waste began, thereby failing to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(2) for that time period;
 - c. From January 17, 2011 to March 11, 2011, Respondent stored spent etching/alodine conversion coat solution combined with waste water, which exhibited the toxicity characteristic for chromium (D007) and was a hazardous waste as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, in a 350-gallon container in Hanger E without marking the container with the words "Hazardous Waste," thereby failing to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(3) for that time period; and
 - d. From March 11, 2011 to September 22, 2011, Respondent stored spent etching/alodine conversion coat solution combined with waste water which it comingled with paint stripping waste streams, for which the comingled waste stream exhibited the toxicity characteristic for chromium (D007) and was a hazardous waste as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, in two 2,100 gallon tanks in Hanger N without marking the two tanks with the words "Hazardous Waste", thereby failing to satisfy the exemption condition set forth in 40 C.F.R. § 262.34(a)(3).
27. The Facility was, at all times relevant to the violations alleged in this CA, a hazardous waste treatment, storage or disposal "facility," as the term is defined by 25 Pa. Code § 260a.10, with respect to the activities and units described herein.
28. 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 the Facility.

29. From at least January 17, 2011 through September 22, 2011, Respondent stored hazardous waste at the Facility without a permit, interim status or valid exemption, in violation of 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).

COUNT II
(Failure to make a hazardous waste determination)

30. The allegations of Paragraphs 1 through 29 of this CA are incorporated herein by reference.
31. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference into 25 Pa. Code § 262a.10, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is hazardous using the following method:
- a. The person should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4;
 - b. The person must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261;
 - c. 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:
 - i. Testing the waste, or
 - ii. Applying knowledge of the hazardous characteristic of the waste.
32. On January 17, 2011, Respondent generated spent etching/alodine conversion coat solution combined with waste water, which exhibited the toxicity characteristic for chromium (D007).
33. On March 11, 2011 Respondent generated a new waste by comingling the spent etching/alodine conversion coat solution identified above in Paragraph 32 with paint stripping waste streams ("comingled waste stream"), for which the comingled waste stream exhibited the toxicity characteristic for chromium (D007).
34. During the 2009 and 2010 calendar years, Respondent generated at least ten waste fluorescent lamps, which exhibited the toxicity characteristic for mercury (D009).
35. At all times relevant to the violations alleged herein, the spent etching/alodine conversion coat solution combined with waste water referred to in Paragraph 32, above, the comingled waste stream referred to in Paragraph 33, above, and the waste fluorescent

lamps referred to in Paragraph 34, above, were “solid waste[s]” as the term is defined in 40 C.F.R. § 261.2, which is incorporated by reference into 25 Pa. Code § 261a.1.

36. Respondent failed to determine until April 23, 2011, whether its spent etching/alodine conversion coat solution combined with waste water referred to in Paragraph 32, and the comingled waste stream referenced in Paragraph 33 above, were hazardous wastes by applying knowledge of the hazardous characteristics of the wastes or by testing the wastes pursuant to 40 C.F.R. § 262.11 which is incorporated by reference into 25 Pa. Code § 262a.10. Respondent disposed of the waste fluorescent lamps referred to in Paragraph 34, above, without having ever determined whether the lamps were hazardous wastes by applying knowledge of the hazardous characteristics of the wastes or by testing the wastes pursuant to 40 C.F.R. § 262.11 which is incorporated by reference into 25 Pa. Code § 262a.10.
37. From January 17, 2011 until April 23, 2011 Respondent failed to perform a hazardous waste determination for its spent etching/alodine conversion coat solution combined with waste water; from March 11, 2011 until April 23, 2011, Respondent failed to perform a hazardous waste determination on its comingled waste stream; and on at least ten occasions in 2009 and 2010, Respondent failed to perform a hazardous waste determination on its waste fluorescent lamps at its Facility; all of which failures to perform are in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11.

COUNT III

(Failure to obtain required assessments for new tank systems)

38. The allegations of Paragraphs 1 through 37 of this CA are incorporated herein by reference.
39. 25 PA Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.192(a), provides, in relevant part and with exceptions not herein applicable, that “[o]wners or operators of new tank systems or components must obtain. . . a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with [40 C.F.R.] § 270.11(d) . . . attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.”
40. A “new tank system” is a tank system which will be used for storage or treatment of hazardous waste and for which installation commenced after July 14, 1986, as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
41. The two 2,100-gallon tank systems in Hanger N used to store the comingled waste stream with a toxicity characteristic for chromium (D007) hazardous waste were installed in 1993 and 1996 and, therefore, are new tank systems as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

42. At the time of EPA's March 1, 2011 inspection, Respondent had not obtained written structural integrity assessments certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d) for Respondent's two 2,100 gallon tank systems in Hanger N which store the comingled waste stream with a toxicity characteristic for chromium (D007) hazardous waste.
43. On March 1, 2011, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.192(a), by failing to obtain written structural integrity assessments certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d) for its two 2,100 gallon tank systems at the Facility.

COUNT IV

(Failure to provide secondary containment for tank systems)

44. The allegations of Paragraphs 1 through 43 of this CA are incorporated herein by reference.
45. 25 PA Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.193, provides, in relevant part and with exceptions not herein applicable, that owners or operators of all existing and new tank systems storing hazardous waste must have secondary containment for such tanks that meets the requirements of this section.
46. At the time of EPA's March 1, 2011 inspection, Respondent did not have secondary containment for its two 2,100 gallon tank systems in Hanger N which store D007 (toxicity characteristic for chromium) hazardous waste.
47. On March 1, 2011, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193, by failing to provide secondary containment for its two 2,100 tank systems at the Facility.

COUNT V

(Failure to inspect tank systems)

48. The allegations of Paragraphs 1 through 47 of this CA are incorporated herein by reference.
49. 25 PA Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.195, provides, in relevant part and with an exception not herein applicable, that owners and operators of tank systems storing hazardous waste must inspect the tank system at least once each operating day by following the methods set forth in 40 C.F.R. § 264.195.

50. From March 11, 2011 through September 22, 2011, Respondent failed to conduct daily inspections in accordance with 40 C.F.R. § 264.195 of its two 2,100 gallon tank systems in Hanger N (constructed in 1993 and 1996) which store D007 (toxicity characteristic for chromium) hazardous waste.
51. From March 11, 2011 through September 22, 2011 Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195, by failing to conduct daily inspections in accordance with 40 C.F.R. § 264.195 of its two 2,100 gallon tank systems at the Facility.

VI. SETTLEMENT

52. In full and final settlement and resolution of EPA's civil claims for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)** in accordance with the terms set forth below.
53. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and upon Respondent's ability to pay a civil penalty.

VII. PAYMENT TERMS

54. The civil penalty amount assessed in Paragraph 52, above, shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest 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 this CAFO is mailed or hand-delivered to Respondent.
55. Respondent shall pay the civil penalty amount assessed in Paragraph 52, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 56, 57, 58, and 59, below, 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-03-2013-0164;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2091

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by 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 45268-0001

- f. 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 680107027 Environmental Protection Agency

- g. 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option:

<https://www.pay.gov/paygov/>

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

i. Additional payment guidance is available at:

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

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

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

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

and

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

56. 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 herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
57. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
58. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
59. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that 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).
60. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

VIII. OTHER APPLICABLE LAWS

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

IX. RESERVATION OF RIGHTS

62. This CAFO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, 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 § 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.

XI. FULL AND FINAL SATISFACTION

63. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this Consent Agreement. 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.
64. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis is based upon information submitted to Complainant by the Respondent, as listed on Attachment A to this Consent Agreement. Respondent and its undersigned representative, by such representative's signature to this Consent Agreement, certify that the information submitted to EPA regarding Respondent's ability to pay is accurate and not misleading.
65. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal 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 the matters at issue in the Allegations of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

XII. PARTIES BOUND

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

XIII. EFFECTIVE DATE

67. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

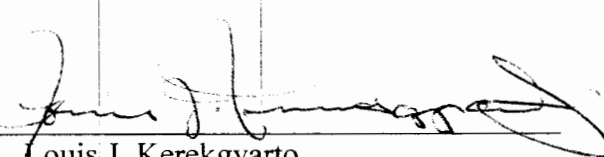
XIV. ENTIRE AGREEMENT

68. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For the Respondent:

Lancaster Aero Refinishers, Inc.

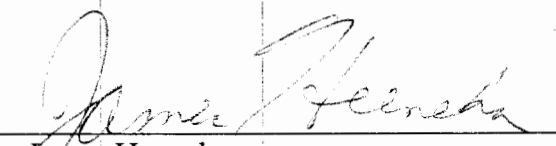
Date: 8/21/13

By: 
Louis J. Kerekgyarto
President

For the Complainant:

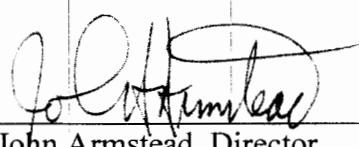
U.S. Environmental Protection Agency, Region III

Date: 9/3/13

By: 
James Heenehan
Senior Assistant Regional Counsel

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

Date: 9.3.13

By: 
John Armstead, Director
Land and Chemicals Division

Attachment A

Documents Submitted by Respondent to Support its Ability-to-Pay Penalty Mitigation Position

- i. 2010 Lancaster Aero Refinishers, Inc. Tax Return;
- ii. 2011 Lancaster Aero Refinishers, Inc. Tax Return;
- iii. 2012 Lancaster Aero Refinishers, Inc. Tax Return;
- iv. 2009 Lancaster Aero Refinishers, Inc. Financial Statement;
- v. 2010 Lancaster Aero Refinishers, Inc. Financial Statement;
- vi. January 2012 – January 2013 Lancaster Aero Refinishers, Inc. bank statements;
- vii. Lancaster Aero Refinishers, Inc. Financial Statement: Corporations, Business or Other Organizations Ability to Pay Claim, dated December 27, 2012;
- viii. May 1, 2012 Agreement for Sale and Purchase of Assets between Lancaster Aero Refinishers, Inc. (Seller) and Lancaster Aero, LLC (Buyer);
- ix. May 28, 2012 letter from attorney Michael Davis on behalf of Lancaster Aero Refinishers, Inc., to James Heenehan of EPA; and
- x. January 11, 2013 email from attorney Michael Davis on behalf of Lancaster Aero Refinishers, Inc., to James Heenehan of EPA.

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

IN THE MATTER OF:

Lancaster Aero Refinishers, Inc.	:	Docket No. RCRA-03-2013-0164
21850 County Road 56	:	
Steamboat Springs, CO 80487	:	
Respondent	:	FINAL ORDER
	:	
Lancaster Aero Refinishers, Inc.	:	Proceeding under Sections 3008(a) and
311 Airport Drive	:	(g) of the Resource Conservation and
Smoketown, PA 17576	:	Recovery Act, <i>as amended</i> ,
	:	42 U.S.C. § 6928(a) and (g).
Facility	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Lancaster Aero Refinishers, Inc., have executed a document entitled "Consent Agreement" which I 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. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 9/12/13

By: Renee Sarajian
Renée Sarajian
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand-delivered the original and one true and correct copy of the Consent Agreement and Final Order for *In the Matter of: Lancaster Aero Refinishers, Inc.* (Docket No. RCRA-03-2013-0164), to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch St., Philadelphia, PA, 19103, and that I sent a true and correct copy of same to Respondent, Lancaster Aero Refinishers, Inc., in care of its below-listed attorney via UPS:

For Respondent: Michael W. Davis, Esq.
Barley, Snyder, Senft & Cohen
126 East King St.
Lancaster, PA 17602

9/12/2013
Date

James Heenehan
James Heenehan
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA Region III

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