UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION 2
290 BROADWAY NEW YORK, NY 10007

MAR 2 1 2019

REPLY TO THE ATTENTION OF: ANHTHU HOANG

Eric Unkauf
Epic Holdings, LLC
22 Hudson Falls Road
South Glens Falls, New York 12803

Dear Mr. Unkauf,

Enclosed please find the Consent Agreement and Final Order which EPA filed with the Region 2 Regional Judicial Officer to resolve the matter of Epic Holdings, LLC, CAA-02-2019-1201 and RCRA-02-2019-7102. Please contact me at 212-637-5033 or hoang.anhthu@epa.gov with questions.

Thank you.

Sincerely,

Anhthu Hoang
Assistant Regional Counsel
EPA Region 2 Office of Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:
Epic Holdings LLC
Respondent.

Proceeding under Section 113(d) of the Clean Air Act and Section 3008 of the Solid Waste Disposal Act, as amended

CONSENT AGREEMENT AND FINAL ORDER
Docket Nos: CAA-02-2019-1201
RCRA-02-2019-7102

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding brought under Section 113(d) of the Clean Air Act (the "CAA"), 42 U.S.C. § 7413(d), Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq*. (referred to collectively as "RCRA" or the "Act") and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 2 ("EPA"). On EPA's behalf, the Director of the Division of Enforcement and Compliance Assistance for the EPA ("Director") is delegated the authority to initiate and sign consent agreements for civil administrative proceedings under Section 113(d) of the CAA (*See* EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A for CAA violations) and Section 3008(a) of RCRA.

3. The Region 2 Administrator has delegated the authority to issue consent orders memorializing settlements providing for a penalty no greater than $37,500 between the agency and respondents resulting from administrative enforcement actions under the CAA and RCRA to the Regional Judicial Officer.
4. The Respondent is Epic Holdings, LLC ("Epic" or "Respondent"), a limited liability company doing business in the state of New York.
5. Complainant and Respondent agree that settlement of this action is in the public interest and consent to enter into this consent agreement ("Consent Agreement" or "Agreement") without adjudication of any issues of law or fact herein.
6. Respondent agrees to comply with the terms of this Consent Agreement and Final Order ("CAFO").
7. The CAA violations described in this CAFO result from the demolition and renovation activities ("Activities") Respondent conducted at 22 Hudson Falls Rd, South Glens Falls, NY 12803 ("Facility").
8. The RCRA violations described in this CAFO occurred during Respondent's management of hazardous waste at the above referenced Facility (also referred to as the "Hudson Falls Property").
9. The EPA has reviewed Financial Information submitted by Respondent to determine the extent to which Respondent is financially able to pay a civil penalty to resolve the violations referenced in this settlement. This Financial Information consists of the financial documents submitted by Respondent and identified in Appendix A. Based upon its review of this Financial Information, EPA has determined that Respondent is limited in its ability to pay a civil penalty for the violations referenced herein and is

able to pay the amount specified in Paragraph I.10 below and in Section IV (Consent Agreement) below.

10. This CAFO directs Epic to pay civil penalties in the amount of $17,250 for its violations of 40 C.F.R. Part 61 Subpart M ("Subpart M") and certain provisions of New York State's EPA authorized hazardous waste program, which EPA has the authority to enforce.

11. Epic neither admits nor denies the factual determinations, legal conclusions or assertions set forth in this CAFO, and reserves all its rights and defenses in this matter, as provided by law or otherwise; except that it consents to the jurisdictional basis for in this CAFO, and agrees to be bound by, and to comply fully with, the provisions in this CAFO, below.

12. The issuance of this CAFO simultaneously commences and concludes this proceeding. *See* 40 C.F.R. § 22.13(b).

II. STATUTORY AND REGULATORY BACKGROUND

The CAA Authorities

EPA's Authority to Impose Civil Penalties for CAA Violations

1. Section 113(a) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any "person" that has violated or is violating any requirement or prohibition of, among other provisions, subchapter I of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of that subchapter including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the CAA.

2. In this CAFO, Complainant finds that Respondent's Activities at the Facility are

subject to and in violation of the work practice requirements under the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos as set forth in Subpart M.

3. Section 114(a)(2) of the CAA provides that for the purpose of determining whether any person is in violation of any emission standard, EPA representatives shall have, among other things, a right of entry, upon presentation of credentials, to inspect any premises.

4. Section 302(e) of the CAA provides that whenever the term "person" is used in the CAA, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

Section 112 of the CAA – National Emissions Standards for Hazardous Air Pollutants

Section 112 of the CAA

5. Section 112 of the CAA requires the Administrator to publish a list of hazardous air pollutants ("HAP"), a list of categories and subcategories of major and area sources of listed HAP, and to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of HAP.

6. Section 112(a) of the CAA sets forth the definitions that are used in Section 112 of the CAA, and those definitions are here incorporated by reference.

7. Section 112(b)(1) of the CAA provides the initial list of HAP, which includes asbestos.

8. Section 112(c) of the CAA requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAP.

9. Section 112(d) of the CAA requires the Administrator to promulgate regulations establishing NESHAP for each category or subcategory of major and area sources of HAP.

10. Section 112(h) of the CAA authorizes EPA to promulgate "design, equipment, work practice, or operational" standards, or combinations thereof, which are consistent with Section 112(d) or (f) of the CAA, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP.

11. Emissions standards promulgated pursuant to Section 112 of the CAA are commonly known as NESHAP. NESHAP promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

The Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M.

12. On April 5, 1984, EPA promulgated Subpart M, pursuant to Sections 112 and 114 of the CAA. 49 Fed. Reg. 13661 (Apr. 5, 1984).

13. 40 C.F.R. § 61.141 sets forth the definitions used in Subpart M, and those definitions are here incorporated by reference.

14. 40 C.F.R. §§ 61.145 and 61.150 set forth a set of work practice standards as part of the Asbestos NESHAP.

15. 40 C.F.R. §§ 61.145 and 61.150 are applicable to the owners or operators of renovation or demolition activities in which the amount of regulated asbestos-containing material ("RACM") that is stripped, removed, dislodged, cut, drilled or similarly disturbed, is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) when the length or area could not be measured prior to the asbestos

removal or demolition activity.

16. 40 C.F.R. § 61.145(a) requires that the affected facility, or part of the facility, where a demolition or renovation that is subject to the Asbestos NESHAP is to take place must be thoroughly inspected for the presence of asbestos prior to the commencement of the renovation activity.

17. 40 C.F.R. § 61.145(b) requires each owner and/or operator of a renovation activity subject to the Asbestos NESHAP to provide the EPA with notice of intention to renovate, and any such notice must be postmarked 10 working days before asbestos stripping or removal work or any other activity begins that would dislodge or disturb asbestos material.

18. 40 C.F.R. § 61.145(c)(1) requires each owner or operator of a renovation activity subject to the Asbestos NESHAP to remove all RACM from the facility that is under renovation before any activity begins that may break up, dislodge, or disturb the material.

19. 40 C.F.R. § 61.145(c)(3) requires that when RACM is stripped from a facility component while it remains in place in a facility subject to the Asbestos NESHAP, the owner and/or operator must adequately wet the RACM during the stripping operation.

20. 40 C.F.R. § 61.145(c)(4) requires that after a facility component covered with, coated with, or containing RACM has been taken out as a unit from a facility subject to the Asbestos NESHAP, it shall be stripped or contained in leak-tight wrapping.

21. 40 C.F.R. § 61.145(c)(6)(i) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP adequately to wet all RACM including the material that has been removed or stripped and ensure that it remains wet

until collected and contained or treated in preparation for disposal.

22. 40 C.F.R. § 61.145(c)(8) prohibits owners and operators of any facility regulated under the Asbestos NESHAP from stripping, removing, or otherwise handling or disturbing RACM unless at least one on-site representative, such as a foreman or a management-level person who is trained in the provisions of the Asbestos NESHAP regulations and the means to comply with them, is present.

23. 40 C.F.R. § 61.150(a) prohibits owners or operators of a demolition or renovation activity subject to the Asbestos NESHAP from discharging any visible emissions to the outside air during the collection, processing, packaging, or transporting of any asbestos-containing waste material generated during such renovation activity.

24. 40 C.F.R. § 61.150(a)(1)(iii) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to seal all RACM in leak-tight containers while wet.

25. 40 C.F.R. § 61.150(a)(1)(iv) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to label the containers or wrapped materials specified in 40 C.F.R. § 61.150(a)(1)(iii) using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration ("OSHA") under 29 C.F.R. § 1910.1001(j)(4) or § 1926.1101(k)(8), and all such labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

26. 40 C.F.R. § 61.150(a)(1)(v) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP that involves asbestos-containing waste material to be transported off the facility to label containers or wrapped

materials with the name of the waste generator and the location at which the waste was generated.

27. 40 C.F.R. § 61.150(b) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to deposit all asbestos-containing waste material as soon as practical by the waste generator in accordance with the provisions at 40 C.F.R. §§ 61.150(b) (1), (2), or (3).

28. 40 C.F.R. § 61.150(c) requires each owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP to mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. All such markings must conform with the requirements of 40 C.F.R. §§ 61.149(d)(1) (i), (ii), and (iii).

29. 40 C.F.R. § 61.150(e) requires each owner or operator of any source subject to the Asbestos NESHAP to furnish upon request, and make available for inspection by EPA, all records required to be maintained regarding waste shipments.

RCRA Authorities

30. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq*. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.

31. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program

(within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the "Federal Program"). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005. EPA is authorized to enforce regulations comprising the authorized State Program.

32. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, including violations of a State's authorized hazardous waste program.
33. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.
34. New York State's hazardous waste regulations are set forth in Title 6 of the New York Codes, Rules, and Regulations ("6 N.Y.C.R.R.") Parts 370 – 373.

III. EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a limited liability company registered to do business in New York State.

2. Respondent owns the Facility, which is also known as both the Hudson Falls Property and the Chase Sporting Complex. The Chase Sports building is located within the Chase Sporting Complex.

CAA and the Asbestos NESHAP

3. Respondent is a "person" within the meaning of Section 302(e) of the CAA.
4. Respondent is an "owner or operator" within the meaning of Sections 111(a)(5) and 112 (a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7411(a)(5), 40 C.F.R. § 63.2, and 40

C.F.R. § 60.2.

5. Demolition and/or renovation activities were performed at the Facility, or portions thereof, prior to August 7, 2014.
6. Inspector Jason Pensabene ("NYSDOL Inspector") from the New York State Department of Labor ("NYSDOL") inspected the Facility on August 7, 2014 ("NYSDOL Inspection").
7. The following conditions existed at the time of the NYSDOL Inspection:
    a. Thermal System Insulation ("TSI") containing pipes were stored in the exterior concrete pad located in the front of the Facility ("Front Concrete Pad").
    b. TSI-containing pipes and air cells that appear to have contained asbestos were stored in the white Box Truck ("Box Truck") that was parked adjacent to the Loading Dock in the rear of the Facility ("Loading Dock").
    c. The interior of the cargo area of the Box Truck was contaminated with air cell debris.
    d. Air cell debris were visible on the sidewalk next to the Box Truck.
    e. Respondent failed to produce records demonstrating that it performed an Asbestos Survey Inspection in accordance with New York State regulations prior to initiating the Activity at the Facility. See NYSDOL Notice of Violation Project No. 26060382 ("NYSDOL NOV") at 2.
    f. Respondent failed to produce records demonstrating that its employees and contractors that were engaged in the Activity have the appropriate state-issued

asbestos handling licenses and certificates pursuant to 12 N.Y.C.R.R. Part 56.[1] See NYSDOL Order at 1.

8. During the NYSDOL Inspection, the NYSDOL Inspector obtained samples of the TSI-containing material found in various locations at the Facility.
9. Bulk samples from TSI located in the Front Concrete Pad contained 6.9-percent and 9.3-percent asbestos, respectively.
10. Bulk samples from TSI located in the Box Truck contained 15.4-percent, 22.2-percent, and 23.5-percent asbestos, respectively.
11. Bulk samples from the "Chase Sports renovation" contained 11.1-percent, 28.6-percent, 16-percent, and 25-percent asbestos, respectively.
12. After August 7, 2014, Respondent hired Alpine Environmental Services, Inc. ("Alpine") to conduct the Asbestos Survey Inspection ("Asbestos Inspection").
13. Alpine submitted a report entitled "Report of Asbestos Contamination Assessment" ("2014 Alpine Report") to Epic. The 2014 Alpine Report indicates Alpine performed an assessment at the Facility for asbestos contamination on August 11, 13 and 21 of 2014.
14. The 2014 Alpine Report states that it is "intended to document the asbestos contamination assessment of pipe insulation debris in the future basketball gymnasium, on a loading dock, in a box truck, and on an outside concrete pad, at [the Facility]." 2014 Alpine Report at 1.

[1] 12 N.Y.C.R.R. § 56-3.2(b) requires all employees of an owner or a contractor who work on activities involving the handling of asbestos to have the appropriate asbestos handling certificate, and the only acceptable proof of the certificate is student copy of the Asbestos Safety Training Certificate (DOH 2832) indicating successful completion of an approved asbestos safety training program. 10 N.Y.C.R.R. Part 73 sets forth the requirements for an asbestos safety training program approvable for providing the DOH 2832 certificate. 10 N.Y.C.R.R. Part 73-5(a)(3) requires, among other things, that the asbestos safety training program include presentation of current Federal law, regulations and guidelines concerning asbestos, including but not limited to the areas of air monitoring, recordkeeping, employee notification of exposures and mandatory worksite safety procedures.

15. Respondent disturbed RACM in the amount that exceeded the Asbestos NESHAP thresholds of 260 linear feet on pipes, 160 square feet on other components, or at least 35 cubic feet off facility components where the length or area could not be measured prior to removal.
16. Respondent disturbed approximately 360 linear feet of pipe insulation in the area identified as the Future Basketball Court ("Future Basketball Court.").
17. Respondent's disturbance of RACM in the Future Basketball Court caused an area of approximately 26,430 square feet in the Future Basketball Court to become contaminated with TSI.
18. Respondent disturbed approximately 60 linear feet of pipe insulation in the Future Basketball Court and stored this material on the Front Concrete Pad.
19. Respondent removed RACM-contaminated material from the Future Basketball Court and stored them in the Box Truck, causing approximately 500 square feet of space in and around the Box Truck to be contaminated with TSI.
20. Respondent's storage of the RACM-contaminated material that was removed from the Future Basketball Court caused approximately 1,100 square feet of space on the Front Concrete Pad to be contaminated with TSI.
21. On or about January 15, 2015, Alpine submitted a report entitled "Report of Limited Asbestos Inspection" ("2015 Alpine Report") to Epic. The 2015 Alpine Report indicated Alpine performed an inspection of the Facility for asbestos on January 8, 2015.
22. The 2015 Alpine Report states that the report was intended to "document the pre-renovation asbestos inspection of the Upper Level of the [Facility]." 2015 Alpine Report at 1.

23. According to the 2015 Alpine Report, Alpine collected samples from the Facility and submitted them to EMSL Analytical, Inc. ("EMSL") to be tested for the presence of asbestos.

24. According to the 2015 Alpine Report, results from the EMSL analysis indicates a sample of the TSI-containing pipe from the Front Concrete Pad, analyzed on August 13, 2014, contained 25.00-percent asbestos.

25. On November 6, 2015, pursuant to CAA § 114, EPA Inspectors Victor Tu and Hans Buenning (the "EPA Inspectors"), accompanied by an NYSDOL inspector, conducted a compliance evaluation of the Facility ("EPA Inspection") in order to determine Respondent's compliance with the CAA and its implementing regulations.

26. The following events took place during the EPA Inspection on November 6, 2015

    a. The EPA Inspectors met with and interviewed representatives of the Respondent and the Facility; these included Eric Unkauf, who identified himself as the owner of Epic and the Facility ("Owner") and Jason Wendell who identified himself as Respondent's employee and Maintenance Manager of the Facility ("Maintenance Manager").

    b. The EPA Inspectors inspected Respondent's records and conducted a walk-through inspection of the Facility.

    c. When requested by the EPA Inspectors, Respondent could not produce documentation demonstrating that it conducted an inspection of the Facility for evidence of the presence of RACM prior to commencing the demolition or renovation activity for which it was issued the NYSDOL Order on August 7, 2014.

d. When requested by the EPA Inspectors, Respondent was unable to demonstrate that Respondent provided EPA or NYSDOL with notification of its intention to conduct demolition or renovation activity that were subject to the Asbestos NESHAP at the Facility prior to August 7, 2014.

e. The EPA Inspectors interviewed the Maintenance Manager.

27. The Maintenance Manager was not certified as an Asbestos Supervisor in accordance with the requirements of 40 C.F.R. § 61.145(c)(8) prior to August 7, 2014.

28. No employee of Respondent who worked on the Activity at the Facility was certified as an Asbestos Supervisor in accordance with the requirements of 40 C.F.R. § 61.145(c)(8) prior to August 7, 2014.

29. The Maintenance Manager did not obtain his Asbestos Supervisor Training in accordance with the requirements of 40 C.F.R. § 61.145(c)(8) until after August 7, 2014.

30. TSI-containing pipes were placed in the Front Concrete Pad.

31. The Front Concrete Pad where the TSI-containing pipes were located was not gated, and therefore was easily accessible to the general public.

32. TSI-containing pipes were not contained in leak-tight wrapping.

33. TSI-containing pipes were exposed to ambient air.

34. TSI-containing pipes were dry and not kept adequately wet.

35. TSI-containing pipes that were stored on the Front Concrete Pad had been kept in that condition in the storage yard since at least August 7, 2014.

36. Respondent's employee and contractors freely crossed, without decontamination, the barrier created with red barrier tape and stored metal framing in close proximity to the TSI-containing pipes on the Front Concrete Pad.

37. TSI-containing pipes were kept in the Box Truck and Loading Dock.

38. The Box Truck containing the TSI-containing pipes was not marked as a vehicle containing asbestos in accordance with the Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration ("OSHA Standards") under 29 C.F.R. § 1910.1001(j)(4) or § 1926.1101(k)(8).

39. The Box Truck was not marked, with markings that conform with the requirements of 40 C.F.R. §§61.149(d)(1) (i), (ii), and (iii), as a vehicle to be used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible.

40. TSI-containing pipes that were stored in the Box Truck were not wrapped in any leak-tight wrapping.

41. TSI-containing pipes that were stored in the Box Truck were not kept adequately wet.

42. The cargo area of the Box Truck was fully open and exposed to ambient air.

43. RACM in the cargo area of the Box Truck was exposed to the ambient air and not wrapped in leak-tight wrapping.

44. The area adjacent to the RACM-contaminated Future Basketball Court where the Activity occurred was not closed off to limit access by the general public.

45. Respondent's Activity at the Facility was subject to Subpart M.

46. By conducting demolition and renovation activity that removed TSI-containing pipes and other material containing more than 1-percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure, Respondent disturbed RACM pursuant to 40 C.F.R. § 61.141.

47. By conducting demolition and renovation activity that disturbed RACM in an amount that exceeded the Asbestos NESHAP thresholds of 260 linear feet on pipes, 160 square feet on other components, or at least 35 cubic feet off facility components where the length or area could not be measured previously, Respondent is subject to Subpart M.

48. By failing to conduct a thorough inspection of the Facility, or part of the Facility, where demolition or renovation was performed, for the presence of RACM prior to the commencement of renovation or demolition activity, Respondent is in violation of 40 C.F. R. § 61.145(a).

49. By failing to provide EPA with notification of its intent to conduct demolition or renovation activity of the Facility, Respondent is in violation of 40 C.F. R. § 61.145(b).

50. By failing to strip or contain TSI-containing pipes that are covered with, coated with, or contain RACM in leak-tight wrapping after they were removed as a unit or in sections from the Facility, Respondent is in violation of 40 C.F.R. § 61.145(c)(4).

51. By failing to have present a foreman, management-level person, or other authorized representative, who is trained in the provisions of the Asbestos NESHAP regulation and the means of complying with them at the time when RACM was being disturbed, Respondent is in violation of 40 C.F.R. § 61.145(c)(8).

52. By failing adequately to wet the TSI-containing pipe waste material in the front concrete pad and box truck, Respondent has failed to control visible emissions to outside air during collection, processing, packaging, or transporting by keeping asbestos-containing TSI-containing pipe waste material adequately wet during the collection, processing, packaging, or transporting in violation of 40 C.F.R. § 61.150(a)(1)(i).

53. By failing to label the container or wrap materials containing asbestos-waste that was processed for disposal but was stored on-site in the box truck and front concrete pad, as specified by OSHA Standards under 29 C.F.R. § 1910.1001(j)(4) or § 1926.1101(k)(8), Respondent is in violation of 40 C.F.R. § 61.150(a)(1)(iv).

54. By failing to label the box truck containing TSI-containing pipes with the name of the waste generator, and the location at which the waste was generated, Respondent is in violation of 40 C.F.R. § 61.150(a)(1)(v).

55. By failing to mark the box truck containing TSI-containing pipes as a vehicle to be used to transport asbestos-containing waste material, with markings that conform to the requirements of 40 C.F.R. §§61.149(d)(1) (i), (ii), and (iii), during the loading and unloading of waste with signs that are visible, Respondent is in violation of 40 C.F.R. § 61.150(c).

56. By failing to label the TSI-containing pipes in the front concrete pad with the name of the waste generator, and the location at which the waste was generated, Respondent is in violation of 40 C.F.R. § 61.150(a)(1)(v).

57. By failing to label the TSI-containing pipes in the box truck with the name of the waste generator, and the location at which the waste was generated, Respondent is in violation of 40 C.F.R. § 61.150(a)(1)(v).

58. By failing to dispose of asbestos containing waste material generated as soon as practical, Respondent is in violation of 40 C.F.R. § 61.150(b)

59. From the Findings of Fact as set forth above, Respondent is subject to the assessment of administrative penalties pursuant to Section 113(d) of the CAA.

RCRA and New York State's EPA Authorized Hazardous Waste Regulatory Program

60. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 6 New York Code of Rules and Regulations ("6 N.Y.C.R.R.") § 370.2(b).

61. In the course of managing and/or maintaining its Hudson Falls Property and/or the buildings located on the Property, Respondent uses paints, stains, solvents, epoxies, glues, adhesives, lubricants and other materials. In the course of using these materials, Respondent generates "hazardous waste" as that term is defined in 6 N.Y.C.R.R. § 371.1(d).

62. Respondent is a "generator" of hazardous waste as that term is defined in 6 N.Y.C.R.R. § 370.2(b). The requirements for generators are set forth in 6 N.Y.C.R.R. Part 372.

63. On or about November 1, 2016, Respondent or its contractor accumulated material including paints, solvents, adhesives and epoxies in a metal cage box and a wooden box in the tower of the Chase Sports building. On or about February 1, 2017, Respondent determined that some of the material accumulated on or about November 1, 2016 in the above referenced boxes constituted hazardous waste.

64. On or about October 10, 2017, more than 270 days after accumulating and/or determining a portion of the material referenced in the above paragraph was hazardous waste, Respondent arranged to have more than 1,120 pounds of this material sent off-site as hazardous waste, identifying the material with hazardous waste codes D001 and D002.

65. On or about April 20, 2017, Respondent informed EPA that it was a "conditionally exempt small quantity generator," generating less than 100 kilograms (220 pounds) of non-acute hazardous waste a month.

66. Pursuant to 6 N.Y.C.R.R. § 371.1(f) (2) and (7), subject to certain inapplicable exceptions, conditionally exempt small quantity generators are not subject to regulation under 6 N.Y.C.R.R. Parts 372 through Subpart 374 and Part 376 *provided* they comply with certain specified requirements including making hazardous waste determinations pursuant to 6 N.Y.C.R.R. § 372.2(a)(2).

67. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(iii), small quantity generators which generate greater than 100 kilograms (approximately 220 pounds) but less than 1000 kilograms (approximately 2,200 pounds) who accumulate hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, 200 miles or more) are subject to the permitting requirements of Part 373.

68. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(ii), subject to meeting certain conditions, large quantity generators can store accumulate hazardous waste on site for 90 days or less without interim status or a permit.

69. Respondent accumulated hazardous waste in excess of the accumulation times set forth in 6 N.Y.C.R.R. § 372.2(a)(8), which would have permitted it to store hazardous waste without interim status or a permit provided other criteria were met.

70. Respondent stores and/or stored hazardous waste at the Hudson Falls Property as the term "storage" is defined in 6 N.Y.C.R.R. § 370.2(b).

71. Respondent's Hudson Falls Property is a "new facility" (hereafter referred to as "facility") as that term is defined 6 N.Y.C.R.R. § 370.2(b).

72. Respondent is and has been the "owner" of the facility as that term is defined in 6 N.Y.C.R.R. § 370.2(b).

73. Respondent is and has been the "operator" of the facility as that term is defined in 6

N.Y.C.R.R. § 370.2(b).

74. Pursuant to 6 N.Y.C.R.R. § 373-2.2(a), subject to certain inapplicable exemptions, the regulations set forth in 6 N.Y.C.R.R. § 373-2 apply to all owners and operators of treatment, storage or disposal facilities.

Failure to Make Hazardous Waste Determination

75. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(2), a person who generates "solid waste" must determine if the solid waste is a hazardous waste using the procedures set forth therein.
76. Pursuant to 6 N.Y.C.R.R. § 371.1(c), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" which is any material that is "abandoned," "recycled" "inherently waste-like," as those terms are further defined.
77. Pursuant to 6 N.Y.C.R.R. § 371.1(c)(3), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerate or "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."
78. On or about November 1, 2016, Respondent generated and abandoned the following waste materials at its facility: Paint residues, paint thinners, lacquers, hardeners, lubricants, hardeners, aerosol spray cans, polyurethane resins, corrosives, "silvering waste water," retarders, wetting agents, and adhesives.
79. Respondent "abandoned" each of the materials identified in paragraph 79 above by storing or accumulating them in a metal cage box or wooden box in Chase Sports building tower before or in lieu of disposing of them.
80. Each of the materials identified in paragraph 79 above was a "discarded material" and "solid waste," as defined in 6 N.Y.C.R.R. § 371.1(c).

81. Prior to at least February 1, 2017, Respondent had not determined if any of the materials identified in paragraph 79 above constituted a hazardous waste.

82. Respondent's failure to determine if each solid waste generated at its facility constitutes a hazardous waste is a violation of 6 N.Y.C.R.R. § 372.2(a)(2).

Failure to Minimize Risks of Fire, Explosion and Releases

83. Pursuant to 6 N.Y.C.R.R. § 373-2.3(b), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

84. As of at least January 30 and 31, 2017, Respondent stored approximately 140 containers of waste, including paints, paint thinners, solvents, lacquers, hardeners, lubricants, polyurethane resins, corrosives, "silvering waste water," retarders, wetting agents, adhesives, and unknowns in a metal cage box and/or a large wooden box in the Chase Sports building tower. All of the containers were haphazardly deposited into the boxes. Some containers were open, corroded, and/or crushed. At least one of container was leaking material due to corrosion. Other containers contained flammable material according to their labels. Some containers had no labels or markings identifying their contents.

85. The conditions referenced in the paragraph above potentially led to the storage of incompatible wastes. Some containers were also leaking, increasingly the likelihood that the chemicals and/or waste products would come in contact with each other. This haphazard storage of materials, combined with leaking containers, could have resulted in a fire or explosion in the Chase Sports building, portions of which are visited by local

residents. The risk of a fire or explosion was exacerbated because some containers held ignitable materials.

86. Respondent's storage of hazardous waste and chemicals as set forth above constitutes a failure by Respondent to maintain or operate its facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 6 N.Y.C.R.R. § 373-2.3(b).

Failure to Comply with Hazardous Waste Container Requirements

87. Pursuant to 6 N.Y.C.R.R. § 373-2.9(d) containers holding hazardous waste must, among other requirements, not be opened, handled or stored in a manner which may rupture the container or cause it to leak.

88. Pursuant to 6 N.Y.C.R.R. § 373-2.9(b), if a container holding hazardous waste is not in good condition or begins to leak, the waste must be transferred to another container in good condition or otherwise be properly managed.

89. Some of the containers referenced in paragraph 85 above contained hazardous waste and were handled and stored in a manner that may have ruptured or caused the container to leak. Additionally, Respondent failed to transfer waste from at least one leaking container referenced in paragraph 85 above to another container in good condition or to otherwise properly manage the material.

90. Respondent's failure to properly manage containers holding hazardous waste, including failing to transfer waste from one leaking container to a container in good condition or otherwise properly manage the material, constitutes a violation of 6 N.Y.C.R.R. § 373-2.9.

IV. CONSENT AGREEMENT

1. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
    a. admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
    b. consents to the assessment of a civil penalty as stated below;
    c. consents to the issuance of the attached Final Order;
    d. waives any right to contest the violations of law set forth this Consent Agreement;
    e. waives its rights to appeal the Order accompanying this Agreement; and
    f. neither admits nor denies the EPA's Findings of Fact and Conclusions of Law set forth above.
2. For the purpose of this proceeding, Respondent:
    a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;
    b. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
    c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under the CAA or RCRA.

d. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Northern District of New York; and

e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

3. Penalty Payment. Respondent agrees to:

a. pay the civil penalty in the total amount of $17,250 ("EPA Penalty") within 30 calendar days of the Effective Date of the Final Order.

b. pay the EPA Penalty using any method, or combination of methods, provided on the website: https://www.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket No. CAA-02-2019-1201 and RCRA-02-2019-7102."

c. promptly after payment of the EPA Penalty, send proof of payment to

Robert Buettner, Chief
Air Compliance Branch, EPA Region 2
290 Broadway, New York, NY 10007
Buettner.robert@epa.gov

("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information reasonably required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No. **CAA-02-2019-1201 and RCRA-02-2019-7102**").

4. Resolution of this case is conditioned upon the veracity and completeness of the Financial Information submitted to EPA by the Respondent. If, after providing Respondent with an opportunity to comment, the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Respondent will be notified in writing and by the unreviewable discretion of EPA and/or the Department of Justice, shall, upon receipt of such notification, forfeit all payments made under this Consent Agreement and this settlement shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's, the Department of Justice, the United States Internal Revenue Service, and/or any other federal agency's right to pursue any other cause of action arising from Respondent's false or materially inaccurate information.
5. If Respondent fails to timely pay any portion of the penalty assessed in this Agreement, the EPA may:
    a. request the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
    b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
    c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to,

referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

d. suspend or revoke Respondent's licenses or other privileges,or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

6. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

7. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

8. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

9. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

10. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

V. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

11. In accordance with 40 C.F.R. § 22.18(c), compliance with the terms of this CAFO resolves Respondent's liability under Section 113(d) of the CAA and Section 3008(a) of

RCRA for federal civil penalties for the violations and facts specifically identified, set out, or stipulated above; it resolves no other liability.

12. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
13. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
14. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.
15. Any violation of the attached Final Order may result in a civil judicial action for an injunction or civil penalties of up to $95,284 per day per violation, or both, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c).
16. The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
17. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, RCRA and their implementing regulations, nor other federal, state, or local laws, statutes or regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
18. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent

and substantial endangerment to the public health, welfare, or the environment.

19. This CAFO and any provision herein shall not be construed as an admission in any civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with the provisions of this CAFO.

VI. EFFECTIVE DATE

20. Respondent and Complainant agree to issuance of the attached Final Order. Promptly upon filing with the Hearing Clerk, the EPA will transmit a copy of the filed Consent Agreement and Final Order to the Respondent by email and US Mail to the following:

    Eric Unkauf, President
    Epic Holdings LLC
    22 Hudson Falls Road
    South Glens Falls, New York 12803
    unkauf1@gmail.com

21. This Consent Agreement and attached Final Order shall become effective on the date of filing with the Hearing Clerk.

For Respondent:

Sole Member LLC March 12th, 2019

Eric Unkauf, President
Epic Holdings LLC
22 Hudson Falls Road
South Glens Falls, New York 12803

For Complainant:

MAR 19, 2019

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

APPENDIX A

List of Financial Documents Submitted to EPA in or about June 2018 by Epic Holdings LLC ("Epic') to demonstrate its financial status:

1. Copies of Epic's Federal Income Tax Forms[1]

    a. 2014: IRS Form 1065
    b. 2015: IRS Form 1065
    c. 2016: IRS Form 1065
    d. 2013: IRS Form 1040-Section C, Profit or Loss Form Business (Not the complete return)

2. Epic Profit and Loss Statements

    a. "Epic Holdings LLC Profit & Loss January through December 2015" (Date created 04/29/18)
    b. "Epic Holdings LLC Profit & Loss January through December 2016" (Date created 04/29/18)
    c. "Epic Holdings LLC Profit & Loss January through December 2017" (Date created 04/29/18)

3. Checking Account Statements for Epic from Glens Falls National Bank and Trust Company covering January-December 2017.

4. Copies of various bills issued to Epic indicating the company was in arrears to power, vendor and security suppliers in 2015, 2017, and 2018.

5. "Epic Holdings LLC Sales by Customer Summary May 1-24, 2018" (handwriting inscribed "Rent Roll," date created 05/24/18)

1 Epic informed EPA that each return was filed with the United States Internal Revenue Service.

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Epic Holdings LLC*, CAA-02-2019-1201 and RCRA-02-2019-7102. This Consent Agreement, entered into by the parties, is hereby approved, incorporated by reference and issued, as a Final Order pursuant to Section 113(d) of the CAA and Section 3008 of RCRA, effective on the date of filing with the Hearing Clerk.

Helen Ferrara

Date: March 19, 2019

Helen Ferrara
Regional Judicial Officer
United States Environmental Protection Agency, Region 2

CERTIFICATE OF SERVICE

I certify that on 3/21, 2019, I caused the foregoing "Consent Agreement" and "Final Order," in the Matter of Epic Holdings LLC CAA-02-2019-1201 and RCRA-02-2019-7102 to be filed and copies of the same to be mailed to the parties as indicated below.

One Original and One Copy, by hand delivery to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy. by hand delivery to:

Anhthu Hoang
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy, by Certified Mail-Return Receipt Requested, Article Number 7018 2290 0000 4960 7560 *to:*

Eric Unkauf
Epic Holdings, LLC
22 Hudson Falls Road
South Glens Falls, New York 12803

Dated 3/21, 2019

Signature: [signature]

Print Name: Yolanda Majette

Title: WTS Branch Secretary

U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2