

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

This form was originated by: Cheryl L Jamieson Dec 17-09  
Name of Contact person Date

in the ORC / Ref. III at 215 814 2375  
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT

This is a modification

Name of Company making payment: Metal Improvement Company LLC

The Total Dollar Amount of Receivable: \$ 180,670.00  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA 03-2010-011

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office \_\_\_\_\_ 12/30/09

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
Name of Contact Date

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

1. Rosemarie Pacheco  
Environmental Enforcement Section  
Lands Division, Room 130044  
1425 New York Avenue, N.W.  
Washington, D.C. 20005

2. Originating Office (ORC)
3. Designated Program Office

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

1. Originating Office
3. Regional Hearing Clerk

2. Designated Program Office

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

**In Re:** :

**Metal Improvement Company LLC** : **Docket No. RCRA-03-2010-0011**  
**80 Route 4 East, Suite 310** :  
**Paramus, New Jersey 07652** :  
: **CONSENT AGREEMENT**  
**RESPONDENT** :

**3434 State Road** :  
**Bensalem, PA 19020** :

**FACILITY** :

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Metal Improvement Company, LLC ("Metal Improvement" or "Respondent"), pursuant to 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. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO", hereinafter jointly referred to as the "CA/FO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 3434 State Road, Bensalem, PA 19020 (the "Facility").
2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, Pennsylvania was granted final authorization to administer a state hazardous waste management program ("PaHWR") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§6921-6939e. The PaHWR was reauthorized by EPA on September 26, 2000 (effective on November 27, 2000), January 20, 2004 (effective on March 22, 2004), and April 29, 2009 (effective June 29, 2009). The provisions of the authorized PaHWR through such authorizations, 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).

3. 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 incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWR authorization. Neither the 2004 nor the 2009 authorization make any changes to the November 27, 2000 PaHWR that are relevant to the violations set forth herein.
4. This CA is entered into by Complainant and Respondent to address the violations alleged in the Findings of Fact, as set forth below.
5. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA, as set forth in this CA/FO.
6. For the purposes of this proceeding only, Respondent neither admits nor denies the Findings of Fact contained in this CA, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent neither admits nor denies the Conclusions of Law contained in this CA, except as provided in Paragraph 5, above.
8. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations herein or to appeal the FO attached hereto.
9. The settlement agreed to by the parties in this CA reflects the desire of the parties to resolve this matter without litigation.
10. Respondent consents to the issuance of this CA and to the attached FO and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
11. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

**Notice of Action to the Commonwealth of Pennsylvania**

12. On June 8, 2009, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), 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. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 6 and 7, above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 9, above.
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(15), and 25 Pa. Code § 260a.10.
15. Respondent is, and was at the time of the violations alleged herein, the "owner" and "operator" of a "facility" located at 3434 State Road, Bensalem, PA 19020 (the "Facility"), as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, and, with respect to the term "facility", as defined in 25 Pa. Code § 260a.10.
16. On January 27, 2009, representatives from EPA and the Pennsylvania Department of Environmental Protection ("PADEP") conducted a Compliance Evaluation Inspection of the Facility. At the time of the January 27, 2009 inspection, and at all times relevant to the violations alleged in this CA/FO, Respondent was a large quantity "generator" of the "hazardous waste" at the Facility described herein as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1.
17. At the time of the January 27, 2009 inspection, and at all times relevant to this CA/FO, Respondent was engaged in the "storage" of "hazardous waste" in "containers" at the Facility as described herein, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1 and/or as defined in 25 Pa. Code § 260a.10.
18. On February 5, 2009 and April 16, 2009, EPA issued formal information request letters ("IRLs") to Respondent pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent responded to the IRLs on February 27, 2009 and May 8, 2009, respectively.

### **COUNT I**

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

19. The allegations of Paragraphs 1 through 18 of this Consent Agreement are incorporated herein by reference.
20. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

21. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, as long as the hazardous waste is stored in accordance with a number of conditions set forth in that section.
22. From February 2, 2005 until December 1, 2008, Respondent was storing certain containers of paint filter hazardous waste, EPA Hazardous Waste Code Nos. D007 (chromium) and F005 (spent non-halogenated solvents), and certain containers of wastewater treatment sludge hazardous waste, EPA Hazardous Waste Code Nos. F006 and F019, as further specified below, at the Facility, for time periods greater than ninety (90) days:

**Paint Booth Filter Waste (D007 and F005):**

<u>Dates in Storage</u>	<u>No. of Days in Storage</u>	<u>Storage &gt; 90 Days</u>
From 7/07/06 until 3/30/07	265	175
From 3/30/07 until 7/23/07	114	24
From 7/23/07 until 11/29/07	130	40
From 2/28/08 until 6/10/08	103	13

**Wastewater Treatment Sludge (F006 and F019):**

<u>Dates in Storage</u>	<u>No. of Days in Storage</u>	<u>Storage &gt; 90 Days</u>
From 2/02/05 until 8/22/05	200	110
From 8/22/05 until 3/13/06	170	80
From 4/13/06 until 3/14/07	334	244
From 4/16/07 until 9/28/07	164	74
From 9/28/07 until 5/27/08	242	152
From 8/05/08 until 12/1/08	117	27

23. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) (which in turn incorporates 40 C.F.R. § 265.173(a)), provides that a container holding hazardous waste must always be closed during storage, except when necessary to add or remove waste.
24. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(a)(1), requires that facility personnel successfully complete a program of classroom training or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. § 265.16.

25. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(c), provides that Facility personnel must take part in an annual review of the initial training required by 40 C.F.R. § 265.16(a).
26. 25 PA Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(d), provides that the owner or operator must 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;
  - (2) Written job descriptions for each position at the facility related to hazardous waste management;
  - (3) Written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management; and
  - (4) Records that document that the training or job experience required by 40 C.F.R. § 265.16(d)(1), (2) and (3) has been given to, and completed by, facility personnel.
27. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262a.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(e), provides that the training records on current personnel must be kept until closure of the facility, and training records on each former employee must be kept for at least three years from the date that the employee last worked at the facility.
28. On January 27, 2009, Respondent failed to keep a container of wastewater treatment sludge, EPA Hazardous Waste Code Nos. F006 and F019, in storage at the Facility, closed at a time when it was not necessary to add waste to or remove waste from such container, as required by 40 C.F.R. § 262a.10, which incorporates by reference 40 C.F.R. § 262a.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.173(a).
29. On January 27, 2009, Respondent failed to maintain job titles for each position at the Facility related to hazardous waste management and the name of the employee filling each job, and failed to maintain written job descriptions for each position at the facility related to hazardous waste management as required by 25 PA Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(d)(1) and (2).
30. During calendar year 2005, Facility personnel did not take part in an annual review of the initial training as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) which, in turn, incorporates by reference 40 C.F.R. § 265.16(c)).
31. From at least February 2, 2005 through December 1, 2008, "hazardous wastes" referred to in Paragraph 22, above, generated by Respondent were in "storage" in "containers" at the

Facility as those terms are defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10 and, with respect to the term “storage”, as defined in 25 Pa Code § 260a.10.

32. Respondent failed to qualify for the “less than 90 day” generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), for the activities described in Paragraphs 22 through 31, above, by failing to satisfy the conditions for such exemption as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a).
33. Respondent’s Facility is a hazardous waste treatment, storage or disposal “facility”, as that term is defined by 25 Pa. Code § 260a.10, with respect to the activities described in Paragraphs 22 through 31, above.
34. Respondent has never had a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of hazardous waste at the Facility.
35. 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 activities described in Paragraphs 22 through 31, above.
36. From at least February 2, 2005 to January 27, 2009, Respondent violated 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), by storing hazardous waste at the Facility without a permit, interim status or valid exemption.

## **COUNT II**

### **(Failure to perform hazardous waste determinations)**

37. The allegations of Paragraphs 1 through 36 of this CAFO are incorporated herein by reference as though fully set forth at length.
38. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, shall determine if that waste is a hazardous waste using the following method:
  - (a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4 .
  - (b) He 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:

- (A) testing the waste, or
- (B) applying knowledge of the hazardous characteristic of the waste in light of the material or processes used.

39. Respondent generates used aerosol cans that previously contained materials used for cleaning, painting and other operations at the Facility. The contents of the used aerosol cans are hazardous wastes assigned EPA Hazardous Waste Code No. D001 for the characteristic of ignitability.
40. Respondent generates spent paint filters from painting operations at the Facility. The spent paint filters are hazardous wastes assigned EPA Hazardous Waste Codes D007 (chromium) and F005 (spent non-halogenated solvents).
41. The wastes referred to in Paragraphs 39 and 40, above, are and were at the time of the violations alleged herein "solid wastes" as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2, with exceptions not relevant hereto.
42. At the time of the January 27, 2009 inspection, Respondent disposed of the used aerosol cans which are the "solid wastes" referred to in Paragraph 39, above, in a municipal landfill which did not have a permit or interim status under RCRA § 3005(a) or (e), 42 U.S.C. § 6925(a) or (e), or 25 Pa Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b).
43. During calendar year 2006, Respondent disposed of the spent paint filters which are the "solid wastes" referred to in Paragraph 40, above, in the municipal landfill referred to above.
44. Respondent failed to determine whether its "solid wastes" described in Paragraphs 39 and 40, above, were hazardous wastes by applying knowledge of the hazardous characteristics of the waste or by testing the waste as provided in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11.
45. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform a hazardous waste determination for the solid wastes generated at the Facility that were disposed in a municipal landfill.

### **COUNT III**

**(Failure to properly manifest off-site shipments of hazardous waste)**



46. The allegations of Paragraphs 1 through 45 of this CAFO are incorporated herein by reference as though fully set forth at length.
47. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. Part 262, Appendix (Uniform Hazardous Waste Manifest and Instructions) requires that generators and transporters of hazardous waste and owners and operators of hazardous waste complete the Uniform Hazardous Waste Manifest Form, Form 8700-22, for both interstate and intrastate shipments of hazardous waste. In addition, 25 Pa. Code § 262a.20(a)(1) provides that generators must complete the manifest form in its entirety and distribute copies of such manifest in accordance with its instructions.
48. Respondent generates wastewater treatment sludge from electroplating operations, and from the chemical conversion coating of aluminum, which are characterized as EPA Hazardous Waste Code Nos. F006 and F019, at the Facility.
49. On at least Oct. 19, 2004, Feb. 2, 2005, Aug. 22, 2005, Mar. 13, 2006, Apr. 13, 2006, and Mar. 14, 2007, Respondent shipped off-site for disposal, wastewater treatment sludge, a listed hazardous waste, EPA Hazardous Waste Code Nos. F006 and F019, which was incorrectly identified on the accompanying hazardous waste manifests as soil exhibiting the characteristic of "toxicity" for chromium (EPA Hazardous Waste No. D007).
50. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. Part 262, Appendix (Uniform Hazardous Waste Manifest and Instructions), and 25 Pa. Code § 262a.20(a)(1) by improperly identifying wastewater treatment sludge EPA Hazardous Waste Nos. F006 and F019 as D007 soil on the manifests referred to above.

#### **COUNT IV**

##### **(Failure to keep containers closed except when adding or removing hazardous waste)**

51. The allegations of Paragraphs 1 through 50 of this Consent Agreement are incorporated herein by reference.
52. Pursuant to 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
53. At the time of the January 27, 2009 inspection, a roll-off container holding wastewater treatment sludge which is a hazardous waste assigned EPA Hazardous Waste Nos. F006 and F019 was located under an elevated filter press at the Facility. The roll-off was not closed during storage of such waste. No waste was being added to or removed from this container of hazardous waste at the time of the inspection.
54. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R.

§ 264.173(a), by failing to keep the roll-off container holding wastewater treatment sludge, EPA Hazardous Waste Code Nos. F006 and F019 hazardous waste, closed except when necessary to add or remove waste.

**COUNT V**  
**(Failure to provide annual refresher training)**

55. The allegations of Paragraphs 1 through 54 of this Consent Agreement are incorporated herein by reference.
56. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(a)(1), requires that facility personnel successfully complete a program of classroom training or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. § 264.16.
57. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), requires that facility personnel take part in an annual review of the initial training referred to above.
58. During calendar year 2005, Respondent failed to have facility personnel take part in an annual review of the initial training referred to above, as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c).
59. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(c), by failing to have facility personnel take part in an annual review of their initial training.

**COUNT VI**  
**(Failure to Maintain Training Records)**

60. The allegations of Paragraphs 1 through 59 of this Consent Agreement are incorporated herein by reference.
61. Pursuant to 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d) the owner or operator of a hazardous waste storage facility must 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;
  - (2) Written job descriptions for each position at the facility related to hazardous waste management;
  - (3) Written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to

hazardous waste management; and

(4) Records that document that the training or job experience required by 40 C.F.R. § 264.16(d)(1), (2), and (3), has been given to and completed by facility personnel.

62. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(e), provides that the training records on current personnel must be kept until closure of the facility, and training records on former employees must be kept for at least three years from the date the employee last worked at the facility.
63. Respondent was required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d) and (e), to maintain at the Facility training records of current personnel until closure of the Facility and the training records on former employees for at least three years from the date the employee last worked at the Facility.
64. On at least January 27, 2009, at the time of the CEI, Respondent was not maintaining at the Facility records that document the job titles and job descriptions for each position at the Facility related to hazardous waste management and the name of the employee filling each job, as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16.
65. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d) and (e), by failing to maintain at the Facility records documenting the job titles and job descriptions of each position at the Facility related to hazardous waste management, and the name of the current employee filling each such position, until closure of the Facility.

## **COUNT VII**

### **(Failure to Keep a Copy of a Hazardous Waste Manifest or Submit an Exception Report)**

66. The allegations in Paragraphs 1 through 65, above, are incorporated herein by reference as though fully set forth at length herein.
67. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.23(a) and (b), provides that the generator must sign the manifest certification for each shipment of hazardous waste off-site, obtain the signature of the initial transporter and the date of acceptance, retain a copy of such manifest in accordance with 40 C.F.R. § 262.40(a), and give the transporter the remaining copies of such manifest.
68. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a), provides that a generator must keep a copy of each manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years or until he receives a signed copy from the designated facility

which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

69. 25 Pa. Code § 262a.10, which incorporates, in part, by reference 40 C.F.R. § 262.42, provides that a generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the Pennsylvania Department of Environmental Protection (“PADEP”) if such generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.
70. Respondent failed to retain one copy of a hazardous waste manifest, Hazardous Waste Manifest No. MI9056071, which was signed by the designated facility on July 28, 2006, at the Facility, as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a), and did not submit an Exception Report to PADEP for the manifested waste shipment, as required by 25 PA Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.42.
71. Respondent violated 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.40(a) and, in pertinent part, 40 C.F.R. § 262.42 by failing to keep one copy of a hazardous waste manifest for waste generated at and shipped off-site from the Facility, as described in Paragraph 70, above, and failing to file an exception report for such shipment with PADEP.

### **COUNT VIII**

#### **(Failure to Make a Land Disposal Restriction Hazardous Waste Determination)**

72. The allegations contained in paragraphs 1 through 71 of this CA/FO are incorporated herein by reference.
73. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.2(c), “land disposal” means, with exceptions not relevant to this matter, “placement in or on the land . . . and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.”
74. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), provides, in pertinent part, “[a] generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in [40 C.F.R.] § 268.40, § 268.45, or § 268.49. This determination can be made . . . in either of two ways: testing the waste or using knowledge of the waste.”

75. On at least Oct. 19, 2004, Feb. 2, 2005, Aug. 22, 2005, Mar. 13, 2006, Apr. 13, 2006, and Mar. 14, 2007, Respondent shipped off-site for treatment and disposal, wastewater treatment sludge (EPA Hazardous Waste Nos. F006 and F019), which is a prohibited waste identified in the table "Treatment Standards for Hazardous Waste" at 40 C.F.R. § 268.40, without having made a determination as to whether such waste required treatment prior to disposal, as required by 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1).
76. Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), by failing to make a land disposal restriction hazardous waste determination for the wastewater treatment sludge referred to above.

### COUNT IX

#### **(Failure to Provide Land Disposal Restriction Notice with correct EPA Hazardous Waste Numbers)**

77. The allegations contained in paragraphs 1 through 76 of this CA/FO are incorporated herein by reference.
78. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(2), states in pertinent part, that if a hazardous waste does not meet the applicable land disposal restriction treatment standard, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notification must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 40 C.F.R. § 268.7(a)(4), which includes EPA Hazardous Waste Numbers for the waste at issue.
79. In 2002, Respondent submitted to a hazardous waste treatment and disposal facility a Land Disposal Restriction Notification and Certification Form for its wastewater treatment sludge (EPA Hazardous Waste Nos. F006 and F019) which did not meet land disposal restriction standards, which incorrectly identified such sludge as EPA Hazardous Waste No. D007 soil and did not include the correct EPA Hazardous Waste Numbers for such sludge (F006 and F019).
80. On at least Oct. 19, 2004, Feb. 2, 2005, Aug. 22, 2005, Mar. 13, 2006, Apr. 13, 2006, and Mar. 14, 2007, Respondent shipped off-site for disposal, wastewater treatment sludge (EPA Hazardous Waste Nos. F006 and F019) which is a prohibited waste identified in the table "Treatment Standards for Hazardous Waste" at 40 C.F.R. § 268.40, without having submitted to the receiving treatment or disposal facility a Land Disposal Restriction Notification and Certification form which identified the waste shipped as EPA Hazardous Waste Numbers F006 and F019.

81. On at least Oct. 19, 2004, Feb. 2, 2005, Aug. 22, 2005, Mar. 13, 2006, Apr. 13, 2006, and Mar. 14, 2007, Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(2), by shipping off-site for disposal land disposal restricted hazardous waste without having submitted to the receiving treatment or disposal facility a Land Disposal Restriction Notification and Certification form which identified the waste shipped as EPA Hazardous Waste Numbers F006 and F019.

#### **COUNT X**

##### **(Failure to store universal waste lamps in closed containers)**

82. The allegations of Paragraphs 1 through 81 of this Consent Agreement are incorporated herein by reference.
83. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste must contain used lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed.
84. Respondent is a “small quantity handler of universal waste” as that term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9.
85. At the time of the January 27, 2009 inspection, a container storing universal waste “lamps,” as that term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, at the Facility was not closed.
86. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by failing to store universal waste lamps in a closed container at the Facility.

#### **COUNT XI**

##### **(Failure to correctly label containers of universal waste lamps)**

87. The allegations of Paragraphs 1 through 86 of this Consent Agreement are incorporated herein by reference.
88. Pursuant to 40 C.F.R. § 273.14(e), as incorporated by reference into 25 Pa. Code § 266b.1, a small quantity handler of universal waste must label or mark each container used to store universal waste lamps with one of the following phrases: “Universal Waste - Lamp(s),” “Waste Lamps,” or “Used Lamp(s).”
89. At the time of the January 27, 2009 inspection, a container storing universal waste lamps at the Facility was not labeled or marked clearly with one of the phrases required by 40

C.F.R. § 273.14(e), as incorporated by reference into 25 Pa. Code § 266b.1.

90. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), by failing to correctly label or mark a container of universal waste lamps.

**COUNT XII**  
**(Failure to Date Container of Universal Waste)**

91. The allegations of Paragraphs 1 through 90 of this Consent Agreement are incorporated herein by reference.
92. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received by employing a method specified in 40 C.F.R. § 273.15(c)(1) through (6), or any other method which clearly demonstrates the length of time that the universal waste has been accumulated.
93. At the time of the January 27, 2009 inspection, Respondent failed to demonstrate the length of time that universal waste lamps had been accumulated from the date it became a waste or was received by employing any of the methods specified in 40 C.F.R. § 273.15(c)(1) through (6).
94. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), by failing to demonstrate the length of time that universal waste lamps had been accumulated from the date it became a waste or was received by employing any of the methods specified in 40 C.F.R. § 273.15(c)(1) through (6).

**COUNT XIII**  
**(Failure to Properly Manage Universal Waste)**

95. The allegations of Paragraphs 1 through 94 of this Consent Agreement are incorporated herein by reference.
96. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(2), provides that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
97. At the time of the January 27, 2009 inspection, Respondent was using at the Facility a

cardboard box as a container for universal waste lamps. One of the lamps in the container was broken which resulted in leakage of the contents of the lamp.

98. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(2), by failing to contain a lamp in a container or package that is structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

### **III. CIVIL PENALTIES**

99. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of One Hundred Eighty Thousand, Six Hundred and Seventy Dollars (\$180,670.00), 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 signed copy of this CA/FO, 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 CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.
100. 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. Section 6928(a)(3).
101. Respondent shall remit payment for the civil penalty set forth in Paragraph 99, above, by certified check or cashier's check, or by electronic funds 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-03-2010-0011;
  - 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 and mailed to:

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



Contact: 513-487-2105

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

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by check in any currency drawn with no USA branches shall be addressed to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W.M.L. King Drive  
Cincinnati, OH 45268-0000

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

- G. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA=051036706  
Account No.: 310006, U.S. Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical Location of U.S. Treasury Facility  
5700 Rivertech Court

Rivertech, Maryland 20737

Contact: 301-887-6540  
or 1-866-234-5681

H. On-Line Payment Option:

WWW.PAY.GOV

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

I. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

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

and

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

102. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CA/FO.
103. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 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 or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
104. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a

true and correct copy of this CA/FO 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. Section 13.11(a).

105. 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. Section 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.
106. 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. Section 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. CERTIFICATION OF COMPLIANCE**

107. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this CA, is in compliance with the provisions of RCRA, Subtitle C, 42 U.S.C. §§ 6901 *et seq.*, and the Commonwealth of Pennsylvania's federally authorized hazardous waste program set forth at 25 Pa. Code §§ 260a.1 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle C of RCRA.

#### **V. OTHER APPLICABLE LAWS**

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

#### **VI. RESERVATION OF RIGHTS**

109. This CA/FO 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 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 CA/FO.

**VII. FULL AND FINAL SATISFACTION**

110. The settlement set forth in this CA/FO shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations set forth in the CA/FO.

**VIII. PARTIES BOUND**

111. This CA/FO 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 CA/FO.

**IX. EFFECTIVE DATE**

112. The effective date of this CA/FO 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.


**X. ENTIRE AGREEMENT**

113. This CA/FO 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 CA/FO.

**For the Respondent:**

**Metal Improvement Company LLC**


Date: 12 - 23 - 09

By   
David Rivellini  
Sr. Vice President

**For the Complainant:**

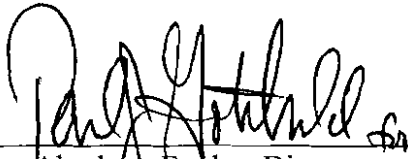
**U.S. Environmental Protection Agency, Region III**

Date: 12-28-2009

By:   
Cheryl L. Jamieson  
Sr. 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: 12-28-09

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

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

**In Re:** :

**Metal Improvement Company LLC** : **Docket No. RCRA-03-2010-0011**  
**80 Route 4 East, Suite 310** :  
**Paramus, New Jersey 07652** :

**RESPONDENT** : **FINAL ORDER**

**3434 State Road** :  
**Bensalem, PA 19020** :

**FACILITY** :

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, **Metal Improvement Company LLC**, 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. Sections 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 amount 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 **ONE HUNDRED EIGHTY THOUSAND, SIX HUNDRED AND SEVENTY DOLLARS (\$180,670.00)** as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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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: 12/30/09

BY: Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region III

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

**In Re:** :

**Metal Improvement Company LLC** : **Docket No. RCRA-03-2010-0011**  
**80 Route 4 East, Suite 310** :  
**Paramus, New Jersey 07652** :

**RESPONDENT** : **CERTIFICATE OF SERVICE**

**3434 State Road** :  
**Bensalem, PA 19020** :

**FACILITY** :

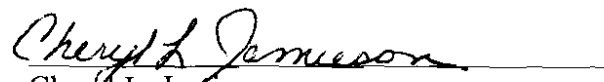
I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, In Re: Metal Improvement Company LLC, Docket No. RCRA-03-2010-0011, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Kenneth Smolko  
Metal Improvement Company  
3434 State Road  
Bensalem, PA 19020**

**David Rivellini  
Metal Improvement Company LLC  
80 Route 4 East, Suite 310  
Paramus, New Jersey 07652**

**Colleen Grace Donofrio  
Babst Calland Clements & Zomnir, P.C.  
380-A Tylers Mill Road  
Sewell, New Jersey 08080**

Dated: Dec 30, 2009

  
Cheryl L. Jamieson  
Sr. Assistant Regional Counsel  
Office of Regional Counsel



EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029