



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 29 2017.

**CERTIFIED MAIL RETURN RECEIPT**

Edward M. Callaway  
Partner  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, Tennessee 37219

Re: Excel TSD of Tennessee LLC, EPA ID. No.: TND980847024  
Consent Agreement and Final Order, Docket No. RCRA-04-2017-4009(b)

Dear Mr. Callaway,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-reference matter. Please note that payment of the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for assistance in resolving this matter. If you have questions, please feel free to contact me at 404-562-8590 or by email at [lamberth.larry@epa.gov](mailto:lamberth.larry@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2017-4009(b)
	)	
Excel TSD of Tennessee LLC	)	
552 Rivergate Drive	)	Proceeding Under Section 3008(a) of the
Memphis, Tennessee 38109	)	Resource Conservation and Recovery Act,
EPA ID No.: TND980847024	)	42 U.S.C. § 6928(a)
	)	
Respondent	)	
_____	)	

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2017 SEP 29 PM 12: 20  
HEARING CLERK

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Tennessee Hazardous Waste Management Act of 1977 (THWMA), Tennessee Code Annotated (Tenn. Code Ann.) §§ 68-212-101 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Chapter 0400-12-01 of the Rules and Regulations of the State of Tennessee (Tenn. Comp. R. & Regs.) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925] and Tenn. Comp. R. & Regs. 0400-12-01.01 through 0400-12-01.10 [40 C.F.R. Parts 260 through 270].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Excel TSD of Tennessee LLC, a limited-liability corporation organized under the laws of the State of Arkansas, licensed to conduct business in Tennessee. Respondent is the owner and operator of a permitted hazardous waste storage and treatment facility that is located at 552 Rivergate Drive in Memphis, Tennessee (the Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Tennessee (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at THWMA, Tenn. Code Ann. § 68-212-101 *et seq.* and Tenn. Comp. & Regs. 0400-12-01.01 through 0400-12-.01.12.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Tennessee has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 68-212-108 of the THWMA, Tenn. Code Ann. § 68-212-108 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Tenn. Comp. R. & Regs. 0400-12-01-.06 (permitted) and Tenn. Comp. R. & Regs. 0400-12-01-.05 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
12. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(b) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.

13. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1(ii) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(d)2 [40 C.F.R. § 261.4(b)].
14. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1(ii)(I) and 0400-12-01-.02(3)(a) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(b)-(e) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
15. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(b) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
16. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(c) [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
17. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(d) [40 C.F.R. §§ 261.20 and 261.23], a solid waste that exhibits the characteristic of reactivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D003.
18. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(a) and Tenn. Comp. R. & Regs. 0400-12-01-.02(3)(e) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Numbers D004-D043.
19. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.02(1)(c)1.(ii)(II) and 0400-12-01-.02(4)(a) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed Tenn. Comp. R. & Regs. 0400-12-01-.02(4) [40 C.F.R. Part 261, Subpart D].
  - a. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(b) [40 C.F.R. § 261.31].
  - b. Listed hazardous wastes include the K-Listed wastes from specific sources identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(c) [40 C.F.R. § 261.32].
  - c. Listed hazardous wastes include the P- and U-Listed wastes identified in Tenn. Comp. R. & Regs. 0400-12-01-.02(4)(d) [40 C.F.R. § 261.33].
20. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
21. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], a “person” includes a corporation.

22. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
23. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “ancillary equipment” means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.
24. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
25. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) “storage” means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste.
26. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
27. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “tank system” means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
28. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10], “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
29. On September 30, 2008, the Tennessee Department for Environmental Control (TDEC) issued RCRA Hazardous Waste Permit Number TNHW-138 (the Permit) to Respondent for the treatment and storage of hazardous waste at Respondent’s Facility located 552 Rivergate Drive in Memphis, Tennessee. On February 9, 2017, a Permit Modification No. 2(A-1014) was issued. Portions of the Permit Modification No. 2(A-1014) were stayed by Respondent’s administrative appeal. However, none of the Permit Conditions addressed in the EPA’s Inspection on January 26, 2016 and in this CA/FO were appealed by Respondent.
30. Pursuant to Condition I.A. of the Permit, Respondent is allowed to treat and store hazardous waste in accordance with the conditions of the Permit. Respondent must also comply with all terms and conditions of the Permit, including those in any attachments, and the applicable regulations set forth in Tennessee Rule Chapter 1200-1-11 (now known as Tennessee Rule Chapter 0400-12-01-.01), as specified in the Permit.

31. Pursuant to Condition II.C.2.(a) of the Permit, Respondent shall follow the procedures described in the “Waste Analysis Plan” found in Attachment 2. Pursuant to Attachment 2.1. of the “Waste Analysis Plan,” Respondent must promptly, clearly, and durably mark each container of hazardous waste with the date that the container was received, with the approved Material Profile Form Number that matches the manifest description of the waste, and with the container number.
32. Pursuant to Condition II.D.1. of the Permit and Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(e)1 [40 C.F.R. § 264.14(a)], Respondent shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility. Respondent shall maintain security for the facility in the manner described in Attachment 3.
33. Pursuant to Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(e)2(ii)(I) [40 C.F.R. § 264.14(b)(2)(i)], Respondent may have an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility. Attachment 3 of the Permit (Security Features and Procedures, Barrier Fencing), states that the active portions of Respondent’s Facility are completely surrounded by a six-foot chain-link fence.
34. Pursuant to Condition II.E.1. of the Permit, and Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(f)1 [40 C.F.R. § 264.15(a)], Respondent shall inspect the Facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to (1) a release of hazardous waste or hazardous constituents to the environment or (2) a threat to human health. Pursuant to Condition II.E.1. of the Permit, Respondent shall inspect each listed item on the inspection form(s) in Attachment 4. The inspection type and frequency shall be in accordance with Attachment 4.
35. Pursuant to Condition II.E.1., Attachment 4.2 of the Permit sets forth the specific areas and equipment that shall be inspected, the issues that the inspector should look for during the inspection, and the frequency of inspections, including:

<b>Areas or Equipment Inspected</b>	<b>Evidence of Potential Problems</b>	<b>Frequency of Inspection</b>
Perimeter fence	Breached, damaged condition, deterioration	Weekly
Container storage areas, inside and out, secondary containment, including sumps	Accumulated liquids, cracks, sealant, not in good condition	Weekly
Container storage areas, inside and out, concrete surfaces including ramps and curbs	Cracks, deterioration, spills, debris, sealant not in good condition, uneven settlement	Weekly
Tanks, structural supports and base	Cracks, spalling, deterioration, uneven settlement, erosion	Daily
Tanks, piping/tank connections, valves, and fittings	External corrosion, cracks, leaks, deterioration, bulging or distortion, valve operation, gasket/seal integrity	Daily

Tanks, tank exterior surface	Cracks, discoloration, deterioration, rust spots, bulges, buckles, film lifting	Daily
Tanks, tank roof and closure devices	Cracks, corrosion, holes, gaps, damaged seals or gaskets, broken or missing hatches, open spaces in the closure device	Daily
Tanks, tank bottom	Cracks, discoloration, corrosion, bulges	Daily
Tanks, secondary containment area	Accumulated waste and storm water, cracks/gaps, deterioration, uneven settlement, sealant not in good condition, debris	Daily

36. Pursuant to Condition II.E.2. of the Permit, and Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(f)3 [40 C.F.R. § 264.15(c)], Respondent shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.
37. Pursuant to Condition II.E.3. of the Permit, and Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(f)4 [40 C.F.R. § 264.15(d)], Respondent must record inspections in an inspection log or summary. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.
38. Pursuant to Condition II.Q. of the Permit, Respondent shall comply with the requirements of Rule 1200-1-11-.06(31) (now known as Tenn. Comp. R. & Regs 0400-12-01-.06(31)) [40 C.F.R. § 264.1050] (Subpart BB), for all equipment that contains or contacts hazardous waste with organic concentrations of at least 10 percent by weight that are managed in units that are subject to the Permit or in any on-site hazardous waste recycling unit.
39. Pursuant to Condition II.Q. of the Permit and Rule 1200-1-11-.06(31)(o)2(i) (now known as Tenn. Comp. R. & Regs. 0400-12-01-.06(31)(o)2(i)) [40 C.F.R. § 264.1064(b)(1)], Respondent must record the following information for each piece of equipment below for which Rule 1200-1-11-.06(31) (now known as Tenn. Comp. R. & Regs 0400-12-01-.06(31)) [40 C.F.R. § 264.1050] applies:
- a. Equipment identification number and hazardous waste management unit identification.
  - b. Approximate locations within the Facility (e.g., identify the hazardous waste management unit on a Facility plot plan).
  - c. Type of equipment (e.g., a pump or pipeline valve).
  - d. Percent-by-weight total organics in the hazardous waste stream at the equipment.
  - e. Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
  - f. Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").
40. Pursuant to Condition II.Q. of the Permit, Respondent shall comply with the requirements of Rule 1200-1-11-.06(31)(a)4.) (now known as Tenn. Comp. R. & Regs. 0400-12-01-.06(31)(a)4.) [40 C.F.R. § 264.1050(d)], which requires that each piece of equipment to which that subpart

applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

41. Pursuant to Condition III.A 2.(c) and Attachment 7.1 of the Permit, the maximum hazardous waste capacity of received hazardous wastes allowed in the Outside Hazardous Waste Container Management Area is 30,060 gallons.
42. Pursuant to Condition III.B. of the Permit, and Tenn. Comp. R & Regs. 0400-12-01-.06(9)(b) [40 C.F.R. § 264.171], the Facility must transfer hazardous waste from containers which are not in good condition, or have begun to leak, into containers which are in good condition and manage the waste in accordance with the applicable regulations.
43. Pursuant to Condition III.F.1., of the Permit, Respondent shall ensure that the container storage areas have a containment system that is designed and operated in accordance with Paragraph III.F.2 of the Permit, and is constructed and maintained as specified in the plans and specifications found in Attachment 7 to the Permit. Attachment 7.3 “Secondary Containment”, sets forth the plans and specifications for the containment system which are that, “[t]he concrete surface, curbs, and sumps within the Outside Hazardous Waste Container Management Area are free of cracks and gaps and sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. The sumps appear to have no construction joints and seem to have been formed with the slab by a monolithic pour.”
44. Pursuant to Condition III.F.2.(a) of the Permit, and Tenn. Comp. R. & Regs. 0400-12-01-.06(9)(f)(1) [40 C.F.R. § 264.175(a)], a secondary containment system shall be maintained free of cracks or gaps.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

45. Respondent is a “person” as defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
46. Respondent is the “owner/operator” of a “facility” located in 552 Rivergate Drive in Memphis, Tennessee, as those terms are defined in Tenn. Comp. R. & Regs. 0400-12-01-.01(2)(a) [40 C.F.R. § 260.10].
47. Respondent is the owner/operator of a hazardous waste treatment and storage facility.
48. Respondent is a Permitted commercial hazardous waste treatment and storage facility that receives and manages numerous types of hazardous waste that are characteristic for ignitability, corrosivity, reactivity, and toxicity as well as numerous F, K, P, and U listed hazardous wastes.
49. On January 26, 2016, representatives from the EPA (EPA Inspector) and representatives from TDEC conducted a compliance evaluation inspection (CEI) at the Respondent’s Facility. The EPA’s findings of the CEI were documented in a report mailed to Respondent, dated May 4, 2016. TDEC’s findings of the CEI were documented in a report mailed to Respondent dated March 11, 2016.



50. At the time of the CEI, the EPA Inspector observed the following unmarked containers: (1) one 70-gallon over pack container of hazardous waste and (2) one 10-gallon container of hazardous waste, located in Area 5 of Hazardous Waste Building A.
51. The EPA therefore alleges that Respondent violated Condition II.C.2.(a), Attachment 2.1, of the Permit, by failing to mark each container of hazardous waste with the date that the container was received, with the approved Material Profile Form Number that matches the manifest description of the waste, and with a container number.
52. At the time of the CEI, the EPA Inspector observed gaps along the bottom of the northern perimeter of the Facility's fence that was used to prevent the unknowing entry, and minimize the possibility of unauthorized entry, of persons or livestock onto the active portion of the Facility.
53. The EPA therefore alleges that Respondent violated Condition II.D.1. of the Permit and Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(e)2(ii)(I) [40 C.F.R. § 264.14(b)(2)(i)], by failing to have an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the Facility.
54. At the time of the CEI, the EPA Inspector observed in the Hazardous Waste Storage Tank area that the paint on the exterior surface of the storage tanks was peeling, the top of the hazardous waste storage tanks were rusted, the tank structural support and base showed signs of erosion, the tank exteriors showed signs of rust spots, and the tank bottoms showed signs of corrosion. The Inspectors observed and documented that Respondent had not made any comments or notes in the inspection records that corresponded with the maintenance issues observed by the Inspectors.
55. The EPA therefore alleges that Respondent violated Conditions II.E. 1, 2, and 3. of the Permit, Tenn. Comp. R. & Regs. 0400-12-01-.06(2)(f)3 and 4 [40 C.F.R. § 264.15(c) and (d)], failing to remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard and by failing to list items noted during the inspections on the inspection form(s) in Attachment 4 to the Permit.
56. At the time of the CEI, the EPA Inspector observed the following regarding the equipment subject to the Air Emission Standards:
  - a. The Hazardous Waste Management Units were numbered on the Subpart BB Monitoring Record; however, there were no corresponding numbered tags and/or markings on the tank piping and connections to match the leak detection and repair records for the hazardous waste tanks.
  - b. Screw connectors for two pieces of equipment (Respondent record numbers 9, 13, and 19), were on one line of the Subpart BB Monitoring Record instead of each connector being identified on a separate line with the monitoring result for that connection in the record, and therefore, the Subpart BB Monitoring Record did not have the required information for each piece of equipment.
57. The EPA therefore alleges that Respondent violated Condition II.Q. of the Permit and Rule 1200-1-11-.06(31)(o)2(i) (now known as Tenn. Comp. R. & Regs. 0400-12-01-.06(31)(o)2(i)) [40 C.F.R. § 264.1064(b)(1)], by failing to record the following information in the Facility

operating record for each piece of equipment to which Rule 1200-01-1-.06(31) (now known as Tenn. Comp. R. & Regs. 0400-12-01-.06(31)) [40 C.F.R. § 264.1050] applies:

- a. Equipment identification number and hazardous waste management unit identification.
- b. Approximate locations within the Facility (e.g., identify the hazardous waste management unit on a Facility plot plan).
- c. Type of equipment (e.g., a pump or pipeline valve).
- d. Percent-by-weight total organics in the hazardous waste stream at the equipment.
- e. Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
- f. Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

58. At the time of the CEI, the EPA Inspector observed that the tags required in the Hazardous Waste Storage Tank area by the Air Emission Standards were either missing from certain equipment connections or the metal washers that were on equipment connections were not labeled.
59. The EPA therefore alleges that Respondent violated Condition II.Q. of the Permit and Rule 1200-1-11-.06(31)(a)(4), (now known as Tenn. Comp. R. & Regs 0400-12-01-.06(31)(a)(4) [40 C.F.R. § 264.1050(d)], by failing to ensure each piece of equipment subject to the Air Emission Standards was marked in such a manner that they can be distinguished readily from other pieces of equipment.
60. At the time of the CEI, the EPA Inspector determined by manual count of the containers that Respondent was storing hazardous waste in the Outside Hazardous Waste Container Management Area, which exceeded the Maximum Hazardous Waste Capacity.
61. The EPA therefore alleges that Respondent violated Condition III.A.2.(c) of the Permit at the time of the CEI, by failing to keep the Maximum Hazardous Waste Capacity of the Outside Hazardous Waste Container Management Area at or below 30,060 gallons of hazardous waste.
62. At the time of the CEI, the EPA Inspector observed a dented, plastic 55-gallon drum containing a hazardous waste, located in Area 4 of the Outside Hazardous Waste Container Management Areas, that was not in good condition.
63. The EPA therefore alleges that Respondent violated Condition III.B. of the Permit, and Tenn. Comp. R & Regs. 0400-12-01-.06(9)(b) [40 C.F.R. § 264.171], by failing to transfer hazardous waste from containers which are not in good condition, or have begun to leak, into containers which are in good condition and manage the waste in accordance with the applicable regulations.
64. At the time of the CEI, the EPA Inspector observed that the permitted hazardous waste container storage area was flooded at the sump drainage grate. Once the water had been pumped down from the pad, the Inspectors observed cracks and an area of loose gravel in the concrete secondary containment.
65. The EPA therefore alleges that Respondent violated Conditions III.F. 1 and 2.(a) of the Permit, and Tenn. Comp. R. & Regs. 0400-12-01-.06(9)(f)(1) [40 C.F.R. § 264.175(a)], by failing to

maintain a containment system free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

66. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above Paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
67. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
68. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
69. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
70. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
71. Respondent 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 CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
72. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
73. Respondent, by signing this CA/FO and performing the work required pursuant to Section VI (Work to be Performed) below, certifies that Respondent will be in compliance with RCRA and the authorized State hazardous waste program.
74. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged in this CA/FO.
75. Each party will pay its own costs and attorneys' fees.

## VI. WORK TO BE PERFORMED

76. **Tank Secondary Containment Structure**
  - a. Within sixty (60) days of the effective date, Respondent shall apply a corrosion-resistant impermeable coating or lining to the interior sides and floor of the concrete secondary

containment structure for the tank system storing or treating hazardous waste in accordance with Tenn. Comp. R. & Regs. 0400-12-01-.06(10)(d) [40 C.F.R. § 264.193].

- b. Within sixty (60) days of the effective date, Respondent shall submit to TDEC a request for a modification of Section IV of the Permit and any other appropriate sections and attachments to the Permit regarding the tank system secondary containment structure, to apply and maintain a corrosion-resistant impermeable coating or lining on the interior sides and floor of the concrete secondary containment structure for the tank system storing or treating hazardous waste at the Facility that meets the requirements of Tenn. Comp. R. & Regs. 0400-12-01-.06(10)(d) [40 C.F.R. § 264.193]. The proposed modification shall also include a description of the type of such coating or lining and the timing of reapplication.
- c. Within thirty (30) days of completion of the requirements in Paragraph 76(a), Respondent shall submit to EPA and to TDEC a certification that the tank concrete secondary containment structure at the Facility is in compliance with the regulatory standards of Tenn. Comp. R. & Regs. 0400-12-01-.06(10)(d) [40 C.F.R. § 264.193] and Paragraph 76(a) above.

**77. Container Secondary Containment Structure**

- a. Within thirty (30) days of the effective date, Respondent shall submit to EPA and to TDEC a certification that the container concrete secondary containment structure at the Facility is in compliance with the regulatory standards of Tenn. Comp. R. & Regs. 0400-12-01-.06(9)(f) [40 C.F.R. § 264.175].
- b. Within sixty (60) days of the effective date, Respondent shall:
  - i. submit to EPA and to TDEC a plan that describes the actions Respondent will take that impact how it complies with the regulatory standards of Tenn. Comp. R. & Regs. 0400-12-01-.06(9)(f) [40 C.F.R. § 264.175] for the container secondary containment structure (Container Secondary Containment Structure Plan), including the planned and proposed changes to the infrastructure; and
  - ii. submit to TDEC a request for a modification of Section III the Permit and any other appropriate sections and attachments to the Permit regarding the container concrete secondary containment structure, to incorporate the Container Secondary Containment Structure Plan into the Permit.

**78. Daily Container Inventory System**

- a. Within sixty (60) days of the effective date, Respondent shall:
  - i. submit to EPA and to TDEC an updated electronic Daily Container Inventory record system that Respondent shall implement and maintain which includes, but is not limited to, the preparation of a Daily Container Inventory Location Report containing the volume of each container and the information required in

Attachment 11 to the Permit (Container Inventory System) that Respondent shall complete by close of business each day; and

- ii. submit to TDEC a request for a modification of Attachment 11 of the Permit and any other appropriate sections and attachments to the Permit regarding the container inventory, to incorporate the updated Container Inventory System into the Permit.

79. Within sixty (60) days of the effective date, Respondent shall submit to TDEC a request for a modification of the Permit requiring Respondent to incorporate into the Permit a revised Inspection and Maintenance Plan for all secondary containment structures at the Facility, which shall detail and demonstrate how Respondent will comply with the regulatory standards of Tenn. Comp. R. & Regs. 0400-12-01-.06(9)(f) [40 C.F.R. § 264.175] and Tenn. Comp. R. & Regs. 0400-12-01-.06(10)(d) [40 C.F.R. § 264.193], including any new permit conditions proposed pursuant to Paragraphs 76-78 above, as appropriate.
80. Once the work required in this Section is complete and the payment of the civil penalty is made pursuant to Section VIII, Respondent may submit a request to the EPA to terminate the CA/FO. In the request to terminate the CA/FO, Respondent shall demonstrate in writing how Respondent has complied with all of the requirements in the CA/FO, which includes providing evidence of meeting the requirements of Paragraphs 76-79 above. Upon receipt of Respondent's request to terminate the CA/FO, the EPA will determine if the work has been done within the required timeframes and completed in accordance with the terms of the CA/FO before terminating the CA/FO.

## VII. NOTIFICATION

81. Unless otherwise specified, copies of all correspondence, certifications, or other submittals relating to or required under this CA/FO shall be in writing, and shall be sent to:

Alan A. Annicella  
Chief, Hazardous Waste Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth St, SW  
Atlanta, Georgia 30303

and

Patrick J. Flood  
Director, Division of Solid Waste Management  
Tennessee Department of Environment and Conservation  
William R Snodgrass Tennessee Tower  
312 Rosa L Parks Avenue, 14th Floor  
Nashville, Tennessee 37243

- 82. All correspondence, certifications or other submittals made by Respondent under this CA/FO shall be hand delivered, sent by certified mail (return receipt requested) or overnight courier, or sent by electronic mail (return receipt requested) and shall be deemed effective upon receipt.
- 83. Any document submitted by Respondent pursuant to this CA/FO which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CA/FO shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
- 84. The certification required by Paragraph 83 above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge and belief the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**VIII. PAYMENT OF CIVIL PENALTY**

- 85. Respondent consents to the payment of a civil penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000), plus interest of 1% per annum, payable as follows:
  - a. The civil penalty in the amount of two payments will be made to complete payment of the entire civil penalty including interest. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be FORTY THOUSAND FIFTY DOLLARS (\$40,050). The first payment is due within thirty (30) days of the effective date of this CA/FO, which is upon its filing with the Regional Hearing Clerk. Respondent's subsequent payment shall thereafter be due within 60 days from said effective date.

- b. Respondent shall make payments in accordance with the following schedule:

<b>Payment Number</b>	<b>Payment shall be made <i>no later than</i></b>	<b>Principle Amount</b>	<b>Interest Amount</b>	<b>Total Payment Amount</b>
1	Thirty (30) calendar days following the effective date of this CA/FO.	U.S. \$ 20,000	U.S. \$ 25.00	U.S. \$ 20,025
2	Sixty (60) calendar days following the effective date of this CA/FO.	U.S. \$ 20,000	U.S. \$ 25.00	U.S. \$ 20,025

- c. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
- d. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, the amount, and appropriateness of the assessed penalty and of this CA/FO shall not be subject to review.
- e. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of FORTY THOUSAND DOLLARS (\$40,000) without interest within thirty (30) calendar days of the effective date of this CA/FO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.
- f. Payments shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
 Cincinnati Finance Center  
 P.O. Box 979077  
 St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

86. Respondent shall submit a copy of each payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Paula A. Whiting  
Environmental Engineer  
Hazardous Waste Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
US EPA Region 4



61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

87. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
  - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
  - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under Subparagraphs (a) and (b).
88. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

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

89. If Respondent fails to comply with the provisions of this CA/FO, Respondent shall pay Stipulated Penalties as indicated below for each violation for each calendar day during which the violation occurs:

Period of Failure to Comply	Penalty Per Calendar Day Per Violation
1st through 6th day	\$250
7th through 30th day	\$500
31st through 60th day	\$750
61st day and beyond	\$1,000

90. Subject to the other Paragraphs in this Section, all Stipulated Penalties begin to accrue on the day that complete performance is due, or a violation occurs, and continue to accrue through the final day of correction of the noncompliance, or the day the EPA submits its Statement of Position to the Director, RCR Division, EPA Region 4, pursuant to Section X (Dispute Resolution) of this CA/FO, whichever occurs first. Nothing herein shall prevent the simultaneous accrual of separate Stipulated Penalties for separate violations of this CA/FO which derive from Respondent's

independent and distinguishable acts and/or omissions. Issuance and receipt of a notice of noncompliance is not a condition precedent to the accrual of Stipulated Penalties.

91. Accrued Stipulated Penalties shall become due and payable thirty (30) calendar days after demand by the EPA for their payment, and shall be payable in the manner discussed in Section VIII (Payment of the Civil Penalty). Respondent may dispute the EPA's assessment of Stipulated Penalties by invoking the dispute resolution procedures under Section X (Dispute Resolution). Except as provided in Section X (Dispute Resolution), the Stipulated Penalties in dispute shall continue to accrue in accordance with Paragraphs 89 and 90, but need not be paid, during the dispute resolution period. Respondent shall pay Stipulated Penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to the EPA within seven (7) calendar days of receipt of such resolution. The EPA in its discretion may waive or reduce any Stipulated Penalties assessed.
92. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this CA/FO.
94. The Stipulated Penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to the EPA by reason of Respondent's failure to comply with any of the terms and conditions of this CA/FO. However, all Stipulated Penalties which are paid by Respondent shall be off-set against any and all penalties for the same violation which the EPA may be entitled to collect as a result of other enforcement actions.
95. No payments under this Section shall be tax deductible for federal tax purposes.

#### **X. DISPUTE RESOLUTION**

96. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this CA/FO.
97. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by the EPA pursuant to this CA/FO, Respondent shall notify the EPA of the dispute (Notice of Dispute) in writing within fourteen (14) calendar days of Respondent's receipt of the Initial Written Decision. The Notice of Dispute shall be mailed to:

Alan A. Annicella  
Chief, Hazardous Waste Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth St, SW  
Atlanta, Georgia 30303

98. Respondent and the EPA shall attempt to resolve the dispute informally. The period for informal negotiations shall not exceed twenty-one (21) calendar days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the dispute (Negotiation Period). The EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the

Negotiation Period. The Negotiation Period may be modified by written agreement of the parties to the dispute.

99. If the parties cannot resolve the dispute informally pursuant to Paragraph 98, then the position advanced by the EPA shall be considered binding unless, within twenty-one (21) calendar days after the conclusion of the informal Negotiation Period, Respondent invokes the formal dispute resolution procedures by serving on the EPA at the address specified in Paragraph 97, and to the Director of the RCR Division, EPA Region 4, a written Statement of Position on the matter in dispute, including, but not limited to, the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this CA/FO, the basis for Respondent's position, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue.
100. Within twenty-one (21) calendar days after receipt of Respondent's Statement of Position, the EPA will serve on Respondent and to the Director of the RCR Division, EPA Region 4, its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the EPA.
101. Following receipt of both Statements of Position, the Director of the RCR Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. Such decision shall not be appealed further.
102. During the pendency of the dispute resolution process, unless there has been a written modification by the EPA of a compliance date, or excusable delay as defined in Section XI (Force Majeure and Excusable Delay), the existence of a dispute as defined in this Section and the EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CA/FO which is not directly in dispute. However, payment of Stipulated Penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, Stipulated Penalties shall accrue in accordance with Paragraphs 89 and 90, unless Respondent prevails on the disputed issue, or the final decision-maker, at his or her discretion, reduces the amount of the accrued penalty upon a finding that Respondent had a good faith basis for invoking the dispute resolution process. Stipulated Penalties shall be assessed and paid as provided Section IX (Delay in Performance/Stipulated Penalties).

## **XI. FORCE MAJEURE AND EXCUSABLE DELAY**

103. Force majeure, for purposes of this CA/FO, is defined as any event arising from causes not reasonably foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CA/FO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the Work to be performed under this CA/FO; financial inability to complete the Work; minor precipitation events; or changed circumstances arising out of sale,

lease, or transfer of Respondent's interest in any and/or all portions of the Facility.

104. If any event occurs or has occurred that may delay the performance of any obligation under this CA/FO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, his or her Section Chief or, in the event both of EPA's designated representatives are unavailable, the Director of RCR Division, EPA Region 4, within seventy-two (72) hours of when Respondent first knew or should have known that the event might cause a delay. Within five (5) calendar days thereafter, Respondent shall provide to the EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event, unless such failure is waived by the EPA at its discretion. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
105. If the EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CA/FO that is affected by the force majeure event will be extended by the EPA for such time as the EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If the EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.
106. If the EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section X (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by the EPA for such time as is necessary to complete such obligation.

## **XII. PARTIES BOUND**

107. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

108. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
109. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

### **XIII. RESERVATION OF RIGHTS**

110. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
111. The EPA reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
112. Consistent with Paragraph 89 of this CA/FO, the EPA reserves the right to pursue an enforcement against Respondent to collect the penalties assessed in this CA/FO.
113. In any action brought by the EPA for a violation of this CA/FO, Respondent shall bear the burden of proving any defenses, including that the EPA's actions were arbitrary and capricious and not in accordance with law.
114. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, including the collection of a penalty, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter, except for matters alleged and resolved in this CA/FO.
115. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.
116. No action or decision by the EPA pursuant to this CA/FO, including without limitation, decisions of the Regional Administrator, the Director of the RCR Division, or any authorized representative of the EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this CA/FO, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this CA/FO.
117. This CA/FO may only be modified by mutual agreement of the EPA and Respondent and subject to the approval of the Regional Judicial Officer. Any agreed modifications shall be in writing, be

signed by both parties, shall have as their effective date the date on which they are approved by the Regional Judicial Officer, and shall be incorporated into this CA/FO and attached as an appendix.

118. Any requests for modification of a compliance date contained in this CA/FO must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification. The EPA has no obligation to approve such requests, but if it does so, such approval must be in writing.

#### **XIV. OTHER APPLICABLE LAWS**

119. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XV. SERVICE OF DOCUMENTS**

120. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Teresa Harris Mann  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9572

121. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Edward M. Callaway  
Partner  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, Tennessee 37219

#### **XVI. SEVERABILITY**

122. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

**XVII. EFFECTIVE DATE**

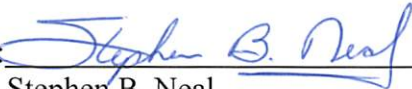
123. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

[Remainder of Page Intentionally Blank]

*In the matter of Excel TSD of Tennessee LLC, Docket No. RCRA-04-2017-4009(b):*


**AGREED AND CONSENTED TO:**

**Excel TSD of Tennessee LLC**

By:   
Stephen B. Neal  
President

Dated: 09/27/2017

**United States Environmental Protection Agency**

By:   
Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Dated: 09/28/17



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2017-4009(b)  
)  
Excel TSD of Tennessee LLC )  
552 Rivergate Drive ) Proceeding Under Section 3008(a) of the  
Memphis, Tennessee 32803 ) Resource Conservation and Recovery Act,  
EPA ID No.: TND980847024 ) 42 U.S.C. § 6928(a)  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 29<sup>th</sup> day of September, 2017.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Excel TSD of Tennessee LLC, Docket Number: RCRA-04-2017-4009(b), and have served the parties listed below in the manner indicated:

Teresa Harris Mann  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

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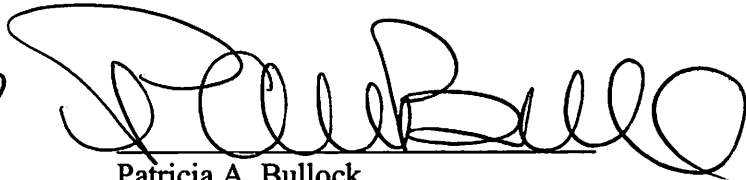
(Via Certified Mail - Return Receipt Requested)

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