UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:	)	
	)	
Albaugh, Inc.	)	
4900 Stockyards Expressway	)	**CONSENT AGREEMENT AND**
	)	**FINAL ORDER**
St. Joseph, Missouri 64504	)	
	)	Docket No. 07-RCRA-2010-0007
RCRA ID No.MOD056381510	)	07-CAA-2010-0009
	)	
Respondent	)	
	)	
Proceedings under Section 3008(a) and (g) of the Resource Conservation and Recovery Act as amended, 42 U.S.C. §§ 6928(a) and (g); and Section 112 of the Clean Air Act, 42 U.S.C. § 7412	)	

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Albaugh, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice) 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g); Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d); and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, Section 390.1 of Chapter

260 of the Missouri Revised Statutes, and the regulations found at 40 C.F.R. §§ 261, 262, and 265, as incorporated in Title 10, Division 25 of the Missouri Code of State Regulations (10 C.S.R. 25) at sections 261 and 262 of Chapter 5.

3. This CAFO serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

4. The Complainant is the Director of the Air and Waste Management Division of EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of EPA.

5. The Respondent is Albaugh, Inc., a corporation authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

RCRA

6. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Missouri has adopted by reference the federal regulations cited herein as pertinent parts in Title 10, Division 25 of the Missouri Code of State Regulations. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring before issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

7. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than $25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to $32,500 per day are authorized for violations of Subchapter III of RCRA that occur from March 15, 2004, through January 12, 2009. For violations of Subchapter III

of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are now authorized. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for violations of RCRA alleged in this CAFO.

8. Pursuant to regulations set forth at 10 CSR 25-4.262, incorporating by reference 40 C.F.R. Part 262, generators of solid waste must perform hazardous waste determinations on all solid wastes.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, Mo. Rev. Stat. § 260.390.1(1), and the Missouri regulations at 10 CSR 25-7.270, incorporating by reference 40 C.F.R. § 270.1(b), require each person owning or operating a facility for treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

10. The regulations at 10 CSR 25-5.262, which incorporate by reference 40 C.F.R. § 262.11, require generators of solid waste to make a determination as to whether the waste generated is a hazardous waste using the methods specified in the regulation.

CAA Section 112(r), 42 U.S.C. § 7412

11. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances. 42 U.S.C. § 7412(r)(7).

12. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

13. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

14. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

15. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to $27,500 per day for each violation that occurs between January 30, 1997, and March 15 2004; $32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009.

16. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations or substance emitting stationary activities, which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

17. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

18. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), as amended, in 40 C.F.R. § 68.130.

19. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or a combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Factual Allegations

20. Respondent is a corporation authorized to do business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent formulates and packages crop protection products such as fertilizer, herbicides, fungicides, and plant growth regulators. Respondent's facility is located at 4900 Stockyards Expressway in St. Joseph, Missouri. Respondent has approximately 125 employees.

22. Respondent's facility is a RCRA Large Quantity Generator (hereinafter LQG) of hazardous waste by both monthly generation and accumulation. 10 CSR 25-5.262, incorporating by reference 40 C.F.R. Part 262.

23. Respondent has been assigned the following EPA ID Number: MOD056381510.

24. On or about April 13 and 14, 2010, an EPA representative conducted a RCRA Compliance Evaluation Inspection at Respondent's facility. Based on information obtained during that inspection, Respondent was issued Notice of Violation.

25. Respondent's facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

26. Dilute solutions of dimethylamine (DMA) and momoisopropylamine (MIPA) are regulated substances pursuant to 40 C.F.R. § 68.3. The threshold quantity for DMA as listed in 40 C.F.R. § 68.130, Table 3, is 10,000 pounds. The threshold quantity for MIPA as listed in 40 C.F.R. § 68.130, Table 3, is 10,000 pounds.

27. On or about September 22, 2009, EPA conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

28. Records collected during the inspection showed that Respondent exceeded the threshold quantity for DMA and MIPA. Respondent filed an updated RMP in 2007.

29. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

Violations

RCRA

Count 1: Failure to Conduct a Hazardous Waste Determination

30. The allegations stated in Paragraphs 1 through 10 and 20-24 above are incorporated as if fully set forth herein.

31. At the time of the April 2010, inspection, Respondent had a 265-gallon plastic tote that was approximately 25% full located in Building 10. The tote had a hose running into it, which was connected to a sink, which Respondent's employees indicated had formerly been used to wash out sample cups containing glysophate and 2,4-D. The tote was not marked and did not have an accumulation start date. Facility personnel indicated that the tote had been in Building 10 at least two years.

32. Respondent failed to conduct a hazardous waste determination on the contents of the tote.

33. Respondent later determined that the contents of the tote were hazardous and shipped them off of the facility with waste codes F003, D001, U240, and D016.

34. Respondent's failure to make a hazardous waste determination on the 265-gallon tote is a violation of 40 C.F.R. § 262.11, incorporated by reference at 10 CSR 25-5.262(1).

Count 2: Failure to Comply with Generator Requirements

35. The allegations stated in Paragraphs 1 through 10 and 20-24 above are incorporated as if fully set forth herein.

36. At the time of the April 2010, inspection, Respondent was not complying with the following generator regulatory requirements at its facility:

Storage of a hazardous waste container for longer than 90 days

37. Mo. Rev. Stat. § 260.390.1(1) requires owners and operators of hazardous waste facilities to obtain a permit in accordance with Mo. Rev. Stat. § 260.395.

38. During the April 2010 inspection, Respondent had a 265-gallon tote that was approximately 25% full located in Building 10. The tote had a hose running into it, which was connected to a sink, which Respondent's employees indicated had formerly been used to wash out sample cups containing glysophate and 2,4-D. The tote was not marked and did not have an accumulation start date. Facility personnel indicated that the tote had been in Building 10 at least two years.

39. Respondent's storage of hazardous waste without a permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925, Mo. Rev. Stat. § 260.390.1(1), and the Missouri regulations at 10 CSR 25-7.270, incorporating by reference 40 C.F.R. § 270.1(b).

Failure to label

40. The regulations at 40 C.F.R. § 262.34(c)(1)(ii), incorporated by reference at 10 CSR 25-5.262(1) and modified by 10 CSR 25-5.262(2)(c)(3) requires a generator to mark containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

41. At the time of the April 2010 inspection, it was discovered that Respondent failed to mark two 1-gallon satellite accumulation containers in Building 1 and one five-gallon container in Building 3.

42. Respondent's failure to mark the containers is a violation of 40 C.F.R. § 262.34(c)(1)(ii) and 10 CSR 25-5.262(1), as modified by 10 CSR 25-5.262(2)(c)(3).

Failure to close container

43. The regulations at 40 C.F.R. § 262.34(c)(1)(i), incorporated by reference at 10 CSR 25-5.262(1) require a generator to manage containers in accordance with 40 C.F.R. § 265.173(a), which requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

44. At the time of the April 2010 inspection, it was discovered that Respondent failed close a 5-gallon container in Building 3.

45. Respondent's failure to close the container is a violation of 40 C.F.R. § 262.34(c)(1)(i) and 10 CSR 25-5.262(1).

Storage of satellite accumulation container for more than 1 year

46. The regulations at 40 C.F.R. § 262.34(a) incorporated by reference at 10 CSR 25-5.262(2)(C)2.A. allows generators to accumulate hazardous waste on-site for 90 days or less without a permit if the generator meets certain requirements.

47. At the time of the April 2010 inspection, it was discovered that Respondent had one 55-gallon satellite accumulation container in Building 2 that was dated 2/4/09; and one 55-gallon satellite accumulation container in Building 20 that was dated 4/9/09.

48. Respondent's storage of these containers longer than 90 days is a violation of 40 C.F.R. § 262.34(a) and 10 CSR 25-5.262(2)(C)2.A.

Failure to provide or have a communication or storage device near the 90-day Hazardous Waste Storage Area

49. The regulations at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.34(a), and incorporated by reference at 10 CSR 25-5.262(1), require personnel involved in an operation where hazardous waste is being poured, mixed, spread, or otherwise handled, to have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee.

50. At the time of the April 2010 inspection, it was discovered that Respondent did not have an emergency communication device or an alarm in the 90-day hazardous waste storage area.

51. Respondent's failure to have an emergency communication device is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to review training

52. The regulations at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.16(c) and incorporated by reference at 10 CSR 25-5.262(1), require facility personnel to take part in an annual review of the initial training required by the regulations.

53. At the time of the April 2010 inspection, it was discovered that Respondent's plant manager did not receive the required annual training in 2007.

54. Respondent's failure to annual train employees is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to include introductory training in training plan

55. The regulations at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.16(d)(3) and incorporated by reference at 10 CSR 25-5.262(1), require that generators maintain a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed in 40 C.F.R. § 265.16(d)(1).

56. At the time of the April 2010 inspection, it was discovered that Respondent did not include a written description of the introductory training provided to each position.

57. Respondent's failure to include the written description of introductory training is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to submit contingency plan to local response agencies

58. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.53(b) and incorporated by reference at 10 CSR 25-5.262(1) require a copy of the contingency plan to be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

59. At the time of the April 2010 inspection, it was discovered that Respondent had not submitted its contingency plan to the local emergency response teams.

60. Respondent's failure to submit its contingency plan to the local emergency response teams is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to describe arrangements with emergency response agencies in contingency plan

61. The regulations at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.52(c), and incorporated by reference at 10 CSR 25-5.262(1), require that the contingency plan describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to 40 C.F.R. § 265.37.

62. At the time of the April 2010 inspection, it was discovered that Respondent's contingency plan did not include the arrangements made with the local emergency response agencies.

63. Respondent's failure to include this information in its contingency plan is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to list secondary emergency coordinators in the contingency plan

64. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(d), and incorporated by reference at 10 CSR 25-5.262(1) require that the contingency plan list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

65. At the time of the April 2010 inspection, it was discovered that Respondent's contingency plan did not list the home phone numbers and addresses for secondary emergency coordinators.

66. Respondent's failure to include this information in the contingency plan is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

Failure to include evacuation routes in the contingency plan

67. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(f), and incorporated by reference at 10 CSR 25-5.262(1), require that the contingency plan include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

68. At the time of the April 2010 inspection, it was discovered that Respondent's contingency plan did not have an adequate evacuation plan.

69. Respondent's failure to maintain an adequate evacuation plan in its contingency plan is a violation of 40 C.F.R. § 262.34(a)(4) and 10 CSR 25-5.262(1).

CAA 112(r)

Count 3

70. The allegations stated in Paragraphs 1 through 5, 11-21, and 25-29 above are incorporated as if fully set forth herein.

71. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a management system, a hazard assessment, a prevention program, and an emergency response program, and the submittal of a Risk Management Plan to EPA.

72. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a prevention program. Specifically, Respondent failed to:

(1)compile written process safety information for the ventilation system as required by 40 C.F.R. § 68.65(d)(1)(v);

(2) reference established design codes, standards or industry guidelines for safety system design, operating procedures and inspections/tests as required by 40 C.F.R. § 68.65(d)(1)(vi);

(3) compile written process safety information related to the safety systems as required by 40 C.F.R. § 68.65(d)(1)(viii);

(4) address in the Process Hazard Analysis (PHA) the identification of any incident which had the likely potential for catastrophic consequences as required by 40 C.F.R. § 68.67(c)(2);

(5) address in the PHA the consequences of failure of engineering and administrative controls, as required by 40 C.F.R. § 68.67(c)(4);

(6) properly implement the PHA system as required by 40 C.F.R. § 68.67(e);

(7) develop and implement written operating procedures that include steps required to correct or avoid deviation as required by 40 C.F.R. § 68.69(a)(2)(i);

(8) develop and implement written operating procedures that address quality control for raw materials and control of hazardous chemical inventory levels as required by 40 C.F.R. § 68.69(a)(3)(iv);

(9) implement operating procedures that reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment and failure to annually certify that the operating procedures are current and accurate as required by 40 C.F.R. § 68.69(c);

(10) reference recognized and generally accepted good engineering practices in mechanical integrity procedures as required by 40 C.F.R. § 68.73(d)(2);

(11) reference the basis for frequency of inspections in accordance with applicable manufacturers' recommendations and good engineering practices in mechanical integrity program as required by 40 C.F.R. § 68.73(d)(3);

(12) document an appropriate determination and response to each of the findings of the compliance audit and document that deficiencies have been corrected as required by 40 C.F.R. § 68.79(d);

(13) document resolutions and corrective action findings after an incident investigation as required by 40 C.F.R. § 68.81(e);

(14) review incident investigation report with all affected personnel whose job tasks are relevant to the incident findings as required by 40 C.F.R. § 68.81(f);

(15) develop a written plan of action regarding the implementation of employee participation as required by 40 C.F.R. § 68.83; and

(16) submit a corrected risk management plan with new accident information within six months of an accident as required by 40 C.F.R. § 68.195.

73. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth in Paragraph 72, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

III. CONSENT AGREEMENT

74. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

75. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

76. Respondent neither admits nor denies the factual allegations or legal conclusions set forth above.

77. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of this CAFO.

78. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

79. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

80. This CAFO addresses all civil administrative claims for the RCRA and CAA violations identified above. Complainant reserves the right to take any enforcement action with respect to violations of RCRA, the CAA, or any other applicable law.

81. Respondent certifies that by signing this CAFO, to the best of its knowledge, Respondent's facility is in compliance with all the requirements of RCRA, 42 U.S.C. § 6901, *et. seq.*, and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

82. The effect of settlement described in Paragraph 80 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 81 of this CAFO.

83. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

84. Nothing in this CAFO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

85. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

86. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the

Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

87. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Sixty-Four Thousand and Eighty-Four Dollars and No Cents ($64,084.00), within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket numbers RCRA-07-2011-0007 and CAA-07-2011-0009.

2. A copy of the check should be sent to:

Kathy Robinson
Regional Hearing Clerk
United States Environmental Protection Agency—Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to:

Sara Hertz Wu
Assistant Regional Counsel
United States Environmental Protection Agency—Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/22/11 By: _____

Becky Weber
Director
Air and Waste Management Division

Date: 2/22/11 By: _____

Sara Hertz Wu
Assistant Regional Counsel

RESPONDENT:

ALBAUGH., INC.

Date: 2/17/11 By: Stuart I. Feldstein

Printed Name: Stuart I. Feldstein

Title: Vice President

IT IS SO ORDERED. This Final Order shall become effective immediately.

By: Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date: Feb. 28, 2011

IN THE MATTER OF Albaugh, Inc., Respondent
Docket Nos. 07-RCRA-2010-0007 and 07-CAA-2010-0009

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sara Hertz-Wu
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Stuart I. Feldstein
Vice-President
ALBAUGH, INC.
1525 NE 36th Street
Ankeny, Iowa 50021

Dated: 2/28/11

Kathy Robinson
Hearing Clerk, Region 7