



3. The State of West Virginia (“West Virginia” or “State”) has received federal authorization to administer a Hazardous Waste Management Program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The West Virginia Hazardous Waste Management Regulations (hereinafter, “WVHWMR”), promulgated by the State pursuant to West Virginia Code Chapter 22, Article 18 (Hazardous Waste Management Act), originally were authorized by EPA on March 28, 1984, effective May 29, 1986 (51 Fed. Reg. 17739), pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the WVHWMR were authorized by EPA on May 10, 2000, effective July 10, 2000 (65 Fed. Reg. 29973) and October 16, 2003, effective December 15, 2003 (68 Fed. Reg. 59542). The provisions of West Virginia’s current, authorized revised WVHWMR are set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (33 Code of State Regulations 20, abbreviated as 33CSR20, and hereinafter cited as WVHWMR § 33-21-1, et seq.). West Virginia regulations entitled “To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities” (hereinafter, “HAPTS DR”), which were promulgated by the State pursuant to West Virginia Code Chapter 22, Article 5 (Air Pollution Control), and became effective in West Virginia on June 1, 1999, originally were authorized by EPA on May 10, 2000, effective July 10, 2000 (65 Fed. Reg. 29973). Revisions to the HAPTS DR were authorized by EPA on October 16, 2003, effective December 15, 2003 (68 Fed. Reg. 59542). The provisions of West Virginia’s current, authorized revised HAPTS DR are set forth in Title 45, Leg. Rule, Division of Environmental Protection, Office of Air Quality, Series 25, Parts 45-25-1 through 45-25-8 (45 Code of State Regulations 25, abbreviated as 45CSR25, and hereinafter cited as HAPTS DR § 45-25-1, et seq.). The provisions of the WVHWMR incorporate by reference the federal hazardous waste management regulations published in the Federal Register through March 8, 2000 (*See*, 68 Fed. Reg. 59543, October 16, 2003), except as specifically excepted from incorporation by reference therein. The provisions of the HAPTS DR incorporate by reference the federal hazardous waste management regulations that are identified in 45CSR25 Table 25-A. The provisions of the WVHWMR and of the HAPTS DR have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).
4. The factual allegations and legal conclusions in this CA that are based on federally-authorized West Virginia Hazardous Waste Management Program requirements cite to WVHWMR and HAPTS DR provisions in effect at the time of the violations alleged herein. Except as otherwise provided, all references and citations herein to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260 - 279 are to the July 1, 1999 edition of the Code of Federal Regulations.

5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized WVHWMR and HAPTSR requirements at its facility located at 390 Industrial Park Blvd., Moorefield, West Virginia 26836 (hereinafter, the "Facility").
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated June 10, 2009, EPA notified the State, through the Hazardous Waste and UST Program Manager of the WVDEP, of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

## **II. GENERAL PROVISIONS**

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in the paragraph immediately above.
9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.
13. The provisions of this CAFO shall be binding upon Complainant and upon Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. Respondent is a Virginia corporation that is headquartered at 3102 Shawnee Drive, Winchester, VA 22601-4208 and is registered to do business in the State of West Virginia.
17. At the Facility, Respondent manufactures wooden kitchen cabinets and wooden bathroom vanities.
18. Respondent is a "person" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
19. The Facility is a hazardous waste storage "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
20. At all times relevant to this CAFO, Respondent has been the "owner" and "operator" of the Facility, as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
21. As described below, Respondent is and, at all times relevant to this CAFO has been, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
22. At all times relevant to this CAFO, and as described below, Respondent has engaged in the "storage" of "solid waste" and "hazardous waste" in a "tank" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
23. At all times relevant to this CAFO, Respondent has been a large quantity generator of hazardous waste at the Facility.
24. On May 20, 2008, a duly authorized representative of EPA conducted a Compliance Evaluation Inspection ("CEI") of the Facility to assess the Respondent's compliance with federally authorized WVHWMR requirements.

25. On July 25, 2008, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to Facility representatives seeking additional information regarding certain of Respondent’s hazardous waste management practices at the Facility and requesting the production of specified documents and information.
26. A Facility representative replied to EPA’s IRL by correspondence dated October 3, 2008.
27. On October 13, 2009, EPA sent a Notice of Noncompliance and Request to Show Cause letter (“NON”) to the Facility advising Respondent of EPA’s preliminary findings of federally authorized WVHWMR violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions pertaining to the Respondent’s compliance at the Facility.
28. In a meeting held on November 10, 2009, representatives of the Respondent responded to the preliminary conclusions set forth by EPA in the NON (hereinafter, the “IRL Response”) and provided EPA with supplemental information.
29. On the basis of the May 20, 2008 CEI, IRL Response and supplemental information provided by Respondent to EPA in response to the NON, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and WVHWMR and HAPTS DR requirements promulgated thereunder.

**Relevant Statutory Requirements**

30. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
31. Respondent has never been issued a permit pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at the Facility, and did not, at any time, have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.70.

**General Permit Exemption Conditions**

32. WVHWMR § 33-20-5.1 incorporates by reference the requirements of 40 C.F.R. § 262.34(a), which provides that generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*, the condition set forth at 40 C.F.R. § 262.34(a)(1)(ii), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in tanks, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts J, BB and CC.

**Permit Exemption Conditions - Tank Systems**

33. 40 C.F.R. Part 265, Subpart J [entitled “Tank Systems”] provides, in pertinent part, as follows:
- a. 40 C.F.R. § 265.190(a) provides, with exceptions not herein applicable, that the requirements of 40 C.F.R. Part 265, Subpart J, “apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste. . . .”
  - b. 40 C.F.R. § 265.192(a) provides, in pertinent part, that owners or operators of new tank systems or components must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), attesting that the system’s “foundation, structural support, seams, connections and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail[.]” and that such assessment must include the information set forth in 40 C.F.R. § 265.192(a)(1) through (5).

**Permit Exemption Conditions - Air Emission Standards for Equipment Leaks**

34. 40 C.F.R. Part 265, Subpart BB [entitled “Air Emission Standards for Equipment Leaks”] provides, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 265, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.

- b. 40 C.F.R. § 265.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 265, Subpart BB, “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: “(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”
  - c. 40 C.F.R. § 265.1050(c) provides that: “[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”
35. 40 C.F.R. Part 265, Subpart BB, provides, in pertinent part and with respect to “Definitions”, as follows:
- a. 40 C.F.R. § 265.1051 provides, in relevant part, that: “[a]s used in this [40 C.F.R. Part 265] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .”, which section therein defines the term:
    - i. *equipment* to mean and include “each valve, pump . . . [and ] pressure release device . . . .”
    - ii. *in gas/vapor service* to mean “that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.”
    - iii. *in light liquid service* to mean “that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.”
36. 40 C.F.R. Part 265, Subpart BB, also provides, in pertinent part and with respect to “Standards: Pumps in light liquid service”, as follows:
- a. 40 C.F.R. § 265.1052(a)(1) provides, with exceptions and exclusions (including those of 40 C.F.R. § 265.1050(d), (e) and (f) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic

concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b) . . . .”

- b. 40 C.F.R. § 265.1052(a)(2) provides that “[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.”
37. 40 C.F.R. Part 265, Subpart BB, also provides, in pertinent part and with an exemption not herein applicable, with respect to “Standards: Pressure relief devices in gas/vapor service”, as follows:
- a. 40 C.F.R. § 265.1054(b)(2) provides that “[n]o later than 5 calendar days after [a] pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 parts per million ppm above background, as measured by the method specified in § 265.1063(c).”
38. 40 C.F.R. Part 265, Subpart BB, provides, in pertinent part and with respect to “Standards: Valves in gas/vapor service or in light liquid service”, as follows:
- a. 40 C.F.R. § 265.1057(a) provides, in relevant part, with exceptions not herein applicable, that “[e]ach valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b) . . . .”
39. 40 C.F.R. Part 265, Subpart BB, provides, in pertinent part and with respect to “Recordkeeping requirements”, as follows:
- a. 40 C.F.R. § 265.1064(b)(1) provides that owners and operators must record in the facility operating record, for each piece of equipment to which 40 C.F.R. Part 265, Subpart BB applies, the following information: “(I) Equipment identification number and hazardous waste management unit identification. (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan). (iii) Type of equipment (e.g., a pump or pipeline valve). (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment. (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid). (vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).”



- b. 40 C.F.R. § 265.1064(g) provides that the following information pertaining to all equipment subject to the requirements in 40 C.F.R. §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record:
- “(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart. (2)(I) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 265.1052(e), 265.1053(I), and 265.1057(f). (ii) The designation of this equipment as subject to the requirements of §§ 265.1052(e), 265.1053(I), or 265.1057(f) shall be signed by the owner or operator. (3) A list of equipment identification numbers for pressure relief devices required to comply with § 265.1054(a). (4)(I) The dates of each compliance test required in §§ 265.1052(e), 265.1053(I), 265.1054, and 265.1057(f). (ii) The background level measured during each compliance test. (iii) The maximum instrument reading measured at the equipment during each compliance test. (5) A list of identification numbers for equipment in vacuum service. (6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

**Permit Exemption Conditions - Air Emission Standards  
for Tanks, Surface Impoundments, and Containers**

40. 40 C.F.R. Part 265, Subpart CC [entitled “Air Emission Standards for Tanks, Surface Impoundments, and Containers”], provides, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1080(a) provides, with exceptions not herein applicable, that the requirements of 40 C.F.R. Part 265, Subpart CC, “apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this [40 C.F.R.] part [265]. . .”.
- b. 40 C.F.R. § 265.1083(b) provides, in relevant part and with exceptions not herein applicable, that “[t]he owner or operator shall control air pollution emissions from each hazardous waste management unit in accordance with the standards specified in [40 C.F.R.] §§ 265.1085 through 265.1088 . . . as applicable to the management of the hazardous waste management unit, except as provided in [40 C.F.R. § 265.1083(c)]. . .”.
- c. 40 C.F.R. § 265.1085(b)(1) provides, in relevant part, that for a tank which meets all of the conditions specified in 40 C.F.R. § 265.1085(b)(1)(I) through (iii), “the

owner or operator shall control air pollution emissions from the tank in accordance with the Tank Level 1 controls specified in [40 C.F.R. § 265.1085(c)]. . . .”

- d. 40 C.F.R. § 265.1085(c)(4) provides, in relevant part, that: “[t]he owner or operator shall inspect the air emission control equipment in accordance with the following requirements: (I) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. . . . (ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year. . . . (iii) In the event that a defect is detected, the owner or operator shall repair the defect. . . . (iv) The owner or operator shall maintain a record of the inspections in accordance with the requirements specified in § 265.1090(b) of this subpart.”
- e. 40 C.F.R. § 265.1090(b) provides, in relevant part, that: “[t]he owner or operator of a tank using air emission controls in accordance with the requirements of [40 C.F.R.]§ 265.1085 of this [Part 265] subpart [CC] shall prepare and maintain records for the tank”, which information includes, but is not limited to: “(ii) A record for each inspection required by [40 C.F.R.] § 265.1085 of this subpart. . . .”

### COUNT I

#### *Operating Without a Permit*

41. The allegations of paragraphs 1 through 40 of this CA are incorporated herein by reference as though fully set forth at length.
42. At the time of the May 20, 2008 CEI and at times prior and subsequent thereto, Respondent stored and managed paint overspray sludge and spent thinner waste with the associated EPA Hazardous Waste Codes D001, D035, F003 and F005, and with organic concentrations of at least 10 percent by weight, in a “tank”, as that term is defined at WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10., located at the less than ninety day hazardous waste storage area of the Facility.
43. The hazardous waste storage tank referenced in the preceding paragraph (hereinafter, “Tank”) was installed at the Facility in June 2003 and was used to store D001, D035, F003 and F005 hazardous waste at all times herein relevant.
44. Installation of the Tank at the Facility commenced after July 14, 1986 such that the Tank and its ancillary equipment, at all times herein relevant, met the definition of a “new tank

- system” pursuant to WVHWMR § 33-20-2.1.a, which incorporates by reference the definitions and the meanings of terms which are ascribed to them in 40 C.F.R. § 260.10.
45. At no time was the Tank a recycling unit under the provisions of WVHWMR § 33-20-3.1, which incorporates by reference the provisions of 40 C.F.R. § 261.6, but at all times relevant to the violations alleged herein, such Tank was a “hazardous waste management unit” pursuant to WVHWMR § 33-20-2.1.a, which incorporates by reference the definitions and the meanings of terms which are ascribed to them in 40 C.F.R. § 260.10.
46. At the time of the May 20, 2008 CEI and at all times herein relevant, the Tank was used to store hazardous waste at the Facility and, pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart J, was subject to the “new tank system” written assessment requirement of 40 C.F.R. § 265.192(a), which is identified and set forth in Paragraph 33, above.
47. At no time did the Respondent ever obtain for the Tank the written assessment required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. § 265.192(a).
48. At all times herein relevant, a pump and two valves associated with the Tank were “*in light liquid service*” and a pressure relief device associated with the Tank was “*in gas/vapor service*”. At all times relevant to the violations alleged herein, such pump, valves and pressure relief device were *equipment* which routinely contained and/or came into contact with hazardous wastes having organic concentrations of at least 10 percent by weight for periods in excess of 300 hours per calendar year.
49. Pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart BB, the *equipment* referenced in the preceding paragraph were subject to applicable marking, monitoring and recordkeeping requirements set forth at 40 C.F.R. §§ 265.1050(c), 265.1052(a)(1) and (2), 265.1054(b)(2); 265.1057(a); and 265.1064(b)(1) and (g), which are identified and set forth in Paragraphs 34, 36, 37, 38 and 39, above.
50. At the time of the May 20, 2008 CEI, neither the pump, the two valves nor the pressure relief device associated with the Tank was marked in any way to distinguish such pieces of equipment readily from other pieces of equipment, as required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. § 265.1050(c).

51. At no time during the period from January 2005 through July 2009 did the Respondent perform monthly monitoring to detect leaks, or weekly visual inspections for indications of liquids dripping from the seal, of the pump associated with the Tank, as required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. §§ 265.1052(a)(1) and (2).
52. The Tank was not equipped with a closed-vent system capable of capturing and transporting leakage from the pressure release device to a control device as described in 40 C.F.R. § 265.1060 and pressure releases from the Tank have occurred subsequent to its installation at the Facility and at times herein relevant.
53. During the period from January 2005 through July 2009, Respondent failed to monitor the pressure relief device on the Tank, by the method specified in 40 C.F.R. § 265.1063(c), within 5 calendar days after each pressure release which occurred during that time period in order to confirm the condition of no detectable emissions, as required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. § 265.1054(b)(2).
54. At no time during the period from January 2005 through July 2009 did the Respondent perform monthly monitoring, by any of the methods specified in 40 C.F.R. § 265.1063(b), of either of the two Tank valves in order to detect leaks from those valves, as required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. § 265.1057(a).
55. At the time of the May 20, 2008 CEI, the Facility's operating record did not contain or include, in a log or otherwise, any of the information identified in Paragraph 39, above, for the pump, two valves and pressure relief device associated with the Tank, as required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. § 265.1064(b)(1) and (g).
56. At all times herein relevant, the Tank at the Facility was a hazardous waste management unit that contained hazardous waste with an average volatile organic concentration greater than 500 ppm by weight that was not reduced by any organic destruction or removal process, did not otherwise qualify for any 40 C.F.R. § 265.1083(c) exemption and, pursuant to 40 C.F.R. § 265.1083(b), was subject to the air pollution control requirements of 40 C.F.R. § 265.1085 and the associated recordkeeping requirements of 40 C.F.R. § 265.1090(b) pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the

- requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart CC.
57. At all times herein relevant, the Tank at the Facility was equipped with a fixed roof and at least three access ports (hereinafter referred to as "closure devices"), located on the top of the Tank, and the Tank was subject to, and not otherwise excepted from, Tank Level 1 air emission controls, pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the requirements of 40 C.F.R. Part 265, Subpart CC, including the requirements set forth at 40 C.F.R. §§ 265.1083(b), 265.1085(b)(1) and (c)(4), and the associated recordkeeping requirements of 40 C.F.R. § 265.1090(b), as identified and set forth in Paragraph 40, above.
58. At the time of the May 20, 2008 CEI, the Respondent did not maintain records of the initial and annual Tank fixed roof and closure device emission control visual inspections required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and, by further reference, the recordkeeping requirements of 40 C.F.R. § 265.1090(b)(1)(ii).
59. For each of the reasons and during each of the time periods set forth in paragraphs 47, 50, 51, 53, 54, 55 and 58, above, Respondent failed to comply with the permit exemption conditions, identified in paragraph 32 above, for the temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator at the Facility, as required pursuant to WVHWMR § 33-20-5.1 and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
60. During each of the times and time periods set forth in Paragraphs 47, 50, 51, 53, 54, 55 and 58, above, the Respondent operated the Tank and the Facility without a permit, interim status or valid exemption to the permitting/interim status requirements.
61. Respondent violated WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by owning and operating a hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

**COUNT II**  
**Failure to Comply with WVHWMR**  
**Manifest Recordkeeping Requirement for Generators**

62. The allegations of paragraphs 1 through 61 of this CA are incorporated herein by reference as though fully set forth at length.
63. WVHWMR § 33-20-5.1 incorporates by reference 40 C.F.R. § 262.23(a), which provides that “[t]he generator must: (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and (3) Retain one copy, in accordance with [40 C.F.R.] § 262.40(a).”
64. WVHWMR § 33-20-5.1 incorporates by reference the recordkeeping requirements of 40 C.F.R. § 262.40(a), which provide that: “[a] generator must keep a copy of each manifest signed in accordance with [40 C.F.R.] § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”
65. On January 31, 2006 and April 11, 2006 Respondent shipped from the Facility hazardous waste generated by the Respondent at the Facility under Hazardous Waste Manifest Nos. 24292 and 22339, respectively.
66. Respondent obtained hand-signed copies of Hazardous Waste Manifest Nos. 24292 and 22339 from the initial transporters of such hazardous waste when such waste was accepted by those initial transporters on January 31, 2006 and April 11, 2006, respectively.
67. Respondent subsequently received from the designated facilities that received the hazardous waste referenced above, signed copies of Hazardous Waste Manifest Nos. 24292 and 22339 from those designated facilities (hereinafter “*fully signed copies of Hazardous Waste Manifest Nos. 24292 and 22339*”).
68. At the time of the May 20, 2008 CEI, Respondent did not maintain at the Facility *fully signed copies* of Hazardous Waste Manifest Nos. 24292 and 22339 that Respondent previously received from the designated facilities that received the associated hazardous waste.
69. Respondent violated WVHWMR § 33-20-5.1, which incorporates by reference the generator manifest recordkeeping requirements of 40 C.F.R. § 262.40(a), by failing to retain at the Facility *fully signed copies* of Hazardous Waste Manifest Nos. 24292 and

22339 as records for at least three years from the date the associated waste was accepted by the initial transporter.

**COUNT III**

***Failure to Comply with WVHWMR  
New Tank System Assessment Requirements***

70. The allegations of paragraphs 1 through 69 of this CA are incorporated herein by reference as though fully set forth at length.
71. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.192(a), provides, in relevant part, and with exceptions not herein applicable, that “[o]wners or operators of new tank systems or components must obtain. . . a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with [40 C.F.R.] § 270.11(d) . . . attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail.”
72. At the time of the May 20, 2008 CEI, Respondent had not obtained a written structural integrity assessment that had been reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), or that included the relevant and applicable information required pursuant to 40 C.F.R. § 264.192(a), for the Tank and its associated ancillary equipment at the Facility.
73. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference the requirements of 40 C.F.R. § 264.192(a), by failing to obtain a written assessment, reviewed or certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), attesting that the Tank and its associated ancillary equipment at the Facility had sufficient structural integrity and was acceptable for the storing and treating of hazardous waste.

**COUNT IV**

***Failure to Comply with HAPTS DR § 45-25-1.5  
Air Emission Standards (for Equipment Leaks)  
Marking Requirements***

74. The allegations of paragraphs 1 through 73 of this CA are incorporated herein by reference as though fully set forth at length.

75. HAPTS DR § 45-25-1.5, incorporates by reference the “Applicability” requirements of 40 C.F.R. Part 264, Subpart BB [entitled “ Air Emission Standards for Equipment Leaks”], which requirements are set forth at 40 C.F.R. § 264.1050, which include the following provisions:
- a. 40 C.F.R. § 264.1050(a) provides, with exceptions and exclusions not herein applicable, that the regulations in 40 C.F.R. Part 264, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.
  - b. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 264, Subpart BB, “applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: “(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.”
  - c. 40 C.F.R. § 264.1050(d) provides that “[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.”
76. HAPTS DR § 45-25-1.5 further incorporates by reference the “Definitions” section of 40 C.F.R. Part 264, Subpart BB, which provisions are set forth at 40 C.F.R. § 264.1051 and provide, in pertinent part that: “[a]s used in this [40 C.F.R. Part 264] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031.” 40 C.F.R. § 264.1031 includes definitions for the terms “*equipment*” and “*in light liquid service*” which previously have been recited in Paragraph 35, above, and which are applicable to such terms as used hereafter.
77. At the time of the May 20, 2008 CEI, the pump, the two valves and the pressure relief device associated with the Tank, each of which was *equipment* then *in light liquid service*, were not marked in any way to distinguish such pieces of *equipment in light liquid service* readily from other pieces of *equipment*, as required pursuant to HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1050(d).
78. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1050(d), by failing to mark the pump, the two valves and the pressure relief device associated with the Tank located at the Facility in such a manner that each such piece of *equipment in light liquid service* could be distinguished



readily from other pieces of *equipment*.

**COUNT V**

***Failure to Comply with HAPTSDR § 45-25-1.5  
Air Emission Standards (for Equipment Leaks)  
Monitoring Requirements  
for Pumps in Light Liquid Service***

79. The allegations of paragraphs 1 through 78 of this CA are incorporated herein by reference as though fully set forth at length.
80. HAPTSDR § 45-25-1.5, incorporates by reference the “Standards: Pumps in light liquid service” requirements of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1052 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1052(a)(1) provides, with exceptions and exclusions (including those of 40 C.F.R. § 264.1050(e), (f) and (g) pertaining to *equipment* in vacuum service, *equipment* that contains or contacts hazardous waste with an organic concentration of 10 percent by weight for less than 300 hours per calendar year and pharmaceutical manufacturing facilities) not herein applicable, that “[e]ach pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 264.1063(b) . . . .”
  - b. 40 C.F.R. § 264.1052(a)(2) provides that “[e]ach pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.”
81. HAPTSDR § 45-25-1.5 also incorporates by reference the “Test methods and procedures” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1063 and, provide, in pertinent part, as follows:
- a. 40 C.F.R. § 264.1063(b)(1) provides that “[l]eak detection monitoring, as required in [40 C.F.R.] §§ 264.1052 - 264.1062, shall comply with . . . Reference Method 21 in 40 CFR Part 60.”
  - b. 40 C.F.R. § 264.1063(d)(1) through (3) provides that “[i]n accordance with the waste analysis plan required by [40 C.F.R.] § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following: (1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 . . . ; (2) Method

9060A . . . SW-846 . . . ; or (3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced [with required] documentation of a waste determination [made] by knowledge . . . .”

82. At all times relevant to the allegations in this CA, the Tank located at the Facility included one pump *in light liquid service*, previously identified above, which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and which was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in HAPTS DR § 45-25-1.5.
83. During the period from January 2005 through July 2009, the pump *in light liquid service* that is referenced in the preceding paragraph was not “monitored monthly to detect leaks” pursuant to the methods specified in 40 C.F.R. § 264.1063 or “checked by visual inspection each calendar week for indications of liquids dripping from the pump seal” by the Respondent pursuant to the methods specified in 40 C.F.R. § 264.1063, in accordance with the applicable requirements of 40 C.F.R. § 264.1052(a)(1) and (2), as incorporated by reference in HAPTS DR § 45-25-1.5.
84. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1052(a)(1) and (2), by failing to monitor monthly by the methods specified in 40 C.F.R. § 264.1063, and to check by visual inspection weekly, the pump *in light liquid service* at the Facility in order to detect leaks.

**COUNT VI**

***Failure to Comply with HAPTS DR § 45-25-1.5  
Air Emission Standards (for Equipment Leaks)  
Monitoring Requirements  
for Pressure Relief Devices in Gas/Vapor Service***

85. The allegations of paragraphs 1 through 84 of this CA are incorporated herein by reference as though fully set forth at length.
86. HAPTS DR § 45-25-1.5 incorporates by reference the “Standards: Pressure relief devices in gas/vapor service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1054 and provide, in pertinent part and with an exemption not herein applicable, as follows:
- a. 40 C.F.R. § 264.1054(b)(2) provides that “[n]o later than 5 calendar days after a pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less

than 500 ppm above background, as measured by the method specified in § 264.1063(c).”

87. At all times relevant to the allegations in this CA, the Tank located at the Facility included a pressure relief device *in gas/vapor service*, previously identified above, which piece of *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and which was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in HAPTS DR § 45-25-1.5.
88. During the period from January 2005 through July 2009, Respondent failed to monitor the pressure relief device on the Tank, by the method specified in 40 C.F.R. § 264.1063(c), within 5 calendar days after each pressure release which occurred during that time period in order to confirm the condition of no detectable emissions, as required pursuant to HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1054(b)(2).
89. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1054(b)(2), by failing to monitor the pressure relief device on the Tank at the Facility, by the method specified in 40 C.F.R. § 265.1063(c), within 5 calendar days after each pressure release which occurred during the period from January 2005 through July 2009.

#### **COUNT VII**

***Failure to Comply with HAPTS DR § 45-25-1.5  
Air Emission Standards (for Equipment Leaks)  
Monitoring Requirements  
for Valves in Light Liquid Service***

90. The allegations of paragraphs 1 through 89 of this CA are incorporated herein by reference as though fully set forth at length.
91. HAPTS DR § 45-25-1.5 incorporates by reference the “Standards: Valves in gas/vapor service or in light liquid service” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1057 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1057(a) provides, in relevant part, with exceptions not herein applicable, that “[e]ach valve in . . . light liquid service shall be monitored monthly to detect leaks by the methods specified in [40 C.F.R.] § 265.1063(b). . . .”

92. At all times relevant to the allegations in this CA, the Tank located at the Facility included two valves *in light liquid service*, previously identified above, which *equipment* routinely contained and/or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and which was not subject to any exemption from the requirements of 40 C.F.R. Part 264, Subpart BB, as incorporated by reference in HAPTS DR § 45-25-1.5.
93. During the period from January 2005 through July 2009, the two valves *in light liquid service* that are referenced in the preceding paragraph were not “monitored monthly to detect leaks” by the Respondent pursuant to the methods specified in 40 C.F.R. § 264.1063, in accordance with the applicable requirements of 40 C.F.R. § 264.1057(a), as incorporated by reference in HAPTS DR § 45-25-1.5.
94. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1057(a), by failing to monitor monthly by the methods specified in 40 C.F.R. § 264.1063, the two valves *in light liquid service* at the Facility in order to detect leaks.

**COUNT VIII**

***Failure to Comply with HAPTS DR § 45-25-1.5***  
***Air Emission Standards (for Equipment Leaks)***  
***Recordkeeping Requirements***

95. The allegations of paragraphs 1 through 94 of this CA are incorporated herein by reference as though fully set forth at length.
96. HAPTS DR § 45-25-1.5 incorporates by reference the “Recordkeeping requirements” of 40 C.F.R. Part 264, Subpart BB, which requirements are set forth at 40 C.F.R. § 264.1064 and provide, in pertinent part, as follows:
- a. 40 C.F.R. § 265.1064(b)(1) provides that owners and operators must record in the facility operating record, for each piece of equipment to which 40 C.F.R. Part 264, Subpart BB applies, the following information: “(i) Equipment identification number and hazardous waste management unit identification. (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan). (iii) Type of equipment (e.g., a pump or pipeline valve). (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment. (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid). (vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).”

- b. 40 C.F.R. § 265.1064(g) provides that the following information pertaining to all equipment subject to the requirements in 40 C.F.R. §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record: “(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart. (2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 264.1052(e), 264.1053(i), and 264.1057(f). (ii) The designation of this equipment as subject to the requirements of §§ 264.1052(e), 264.1053(i), or 264.1057(f) shall be signed by the owner or operator. (3) A list of equipment identification numbers for pressure relief devices required to comply with § 264.1054(a). (4)(i) The dates of each compliance test required in §§ 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f). (ii) The background level measured during each compliance test. (iii) The maximum instrument reading measured at the equipment during each compliance test. (5) A list of identification numbers for equipment in vacuum service. (6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.”
97. At the time of the May 20, 2008 CEI, the Facility’s operating record did not contain or include a log with any of the information identified in the preceding paragraph, for the pump, two valves and pressure relief device associated with the Tank at the Facility, as required pursuant to HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1064(b)(1) and (g).
98. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. § 264.1064(b)(1) and (g), by failing to record in the Facility operating record, or in any log maintained therein, the information identified in paragraph 96, above, for the pump and two valves *in light liquid service* and for the pressure relief device *in gas/vapor service* associated with the Tank at the Facility.

**COUNT IX**  
**Failure to Comply with HAPTS DR § 45-25-1.5**  
**Air Emission Standard**  
**Recordkeeping Requirements for Tanks**

99. The allegations of paragraphs 1 through 98 of this CA are incorporated herein by reference as though fully set forth at length.

100. HAPTS DR § 45-25-1.5 incorporates by reference the requirements of 40 C.F.R. Part 264, Subpart CC [entitled “Air Emission Standards for Tanks, Surface Impoundments, and Containers”], which requirements provide, in pertinent part, as follows:

- a. 40 C.F.R. § 264.1080(a) provides, with exceptions not herein applicable, that the requirements of 40 C.F.R. Part 264, Subpart CC, “apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this [40 C.F.R.] part [264]. . .”.
- b. 40 C.F.R. § 264.1082(b) provides, in relevant part and with exceptions not herein applicable, that “[t]he owner or operator shall control air pollution emissions from each hazardous waste management unit in accordance with the standards specified in [40 C.F.R.] §§ 264.1084 through 264.1087 . . . as applicable to the management of the hazardous waste management unit.”
- c. 40 C.F.R. § 264.1084(b)(1) provides, in relevant part, that for a tank which meets all of the conditions specified in 40 C.F.R. § 264.1084(b)(1)(i) through (iii), “the owner or operator shall control air pollution emissions from the tank in accordance with the Tank Level 1 controls specified in [40 C.F.R. § 264.1084(c)]. . . .”
- d. 40 C.F.R. § 264.1084(c) provides that “[o]wners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of [40 C.F.R. § 264.1084].” 40 C.F.R. § 264.1084(c)(4) thereafter provides, in relevant part, that: “[t]he owner or operator shall inspect the air emission control equipment in accordance with the following requirements. (I) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. . . . (ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year. . . . (iii) In the event that a defect is detected, the owner or operator shall repair the defect . . . (iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.”
- e. 40 C.F.R. § 264.1089(b) provides, in relevant part, that: “[t]he owner or operator of a tank using air emission controls in accordance with the requirements of § 264.1084 of this [Part 264] subpart [CC] shall prepare and maintain records for the tank” , which information includes, but is not limited to: “(ii) A record for

each inspection required by [40 C.F.R.] § 264.1084 of this subpart . . .".

101. At all times herein relevant, the Tank at the Facility was equipped with a fixed roof and at least three closure devices, met all of the conditions specified in 40 C.F.R. § 264.1084(b)(1)(I) through (iii), was using Tank Level 1 controls, and was subject to, and not otherwise excepted from, Tank Level 1 air emission control requirements pursuant to HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. Part 264, Subpart CC, including the requirements set forth at 40 C.F.R. §§ 264.1083(b), 264.1084(b)(1) and (c)(4), and the associated recordkeeping requirements of 40 C.F.R. § 264.1089(b), as identified and set forth in the preceding paragraph.
102. The Respondent did not prepare, such that at the time of the May 20, 2008 CEI it did not maintain, records of the initial and annual Tank fixed roof and closure device emission control visual inspections required pursuant to HAPTS DR § 45-25-1.5, which incorporates by reference the requirements of 40 C.F.R. §§ 264.1084(c)(4) and 264.1089(b)(1)(ii).
103. Respondent violated HAPTS DR § 45-25-1.5, which incorporates by reference the recordkeeping requirements of 40 C.F.R. § 264.1089(b)(1)(ii), by failing to maintain records of the initial and annual fixed roof and closure device emission control visual inspections performed on the Tank at the Facility.

**COUNT X**

***Failure to Comply with WVHW MR  
Universal Waste Lamp Management Requirements***

104. The allegations of paragraphs 1 through 103 of this CA are incorporated herein by reference as though fully set forth at length.
105. WVHW MR § 33-20-13.1 incorporates by reference the requirements of 40 C.F.R. Part 273 (2000 edition), including the "Standards for Small Quantity Handlers of Universal Waste", which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the requirements set forth at 40 C.F.R. §§ 273.13(d)(1), 273.14(e) and 273.15(a) (2000 edition).
106. Respondent is, and at all times herein relevant has been, a small quantity handler of universal waste lamps which is subject to the requirements 40 C.F.R. Part 273, Subpart B (2000 edition).
107. 40 C.F.R. § 273.13(d)(1)(2000 edition) provides that "[a] small quantity handler of universal waste must contain any lamp in containers or packages that are structurally

sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”

108. At the time of the May 20, 2008 CEI, an open and unlabeled cardboard box of universal waste lamps was being accumulated in the Maintenance Shop at the Facility.
109. Respondent violated WVHWMR § 33-20-13.1, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1)(2000 edition), by failing to contain universal waste lamps being accumulated in the Maintenance Shop at the Facility in closed containers or packages capable of preventing breakage.

#### **COUNT XI**

##### ***Failure to Comply with WVHWMR Universal Waste Lamp Labeling/Marking Requirements***

110. The allegations of paragraphs 1 through 109 of this CA are incorporated herein by reference as though fully set forth at length.
111. 40 C.F.R. § 273.14(e) (2000 edition), pertaining to universal waste lamp labeling/marketing requirement, provides that: “[e]ach lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”
112. Respondent violated WVHWMR § 33-20-13.1, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e) (2000 edition), by failing to label or mark the container of universal waste lamps identified in paragraph 108, above, with the phrase “Universal Waste—Lamp(s),” “Waste Lamp(s)” or “Used Lamp(s).”

#### **COUNT XII**

##### ***Failure to Comply with WVHWMR Universal Waste Lamp Accumulation Requirements***

113. The allegations of paragraphs 1 through 112 of this CA are incorporated herein by reference as though fully set forth at length.
114. 40 C.F.R. § 273.15(a) (2000 edition) provides, in relevant part and with an exception not herein applicable, that: “[a] small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler. . .”



115. At the time of the May 20, 2008 CEI, the Respondent was accumulating at the Facility universal waste lamps that it had generated more than three years earlier.
116. Respondent violated WVHWMR § 33-20-13.1, which incorporates by reference the requirements of 40 C.F.R. § 273.15(a) (2000 edition), by accumulating universal waste lamps at the Facility for a period longer than one year from the date that such universal waste was generated.

#### IV. CIVIL PENALTIES

117. Respondent agrees to pay a civil penalty in the amount of **Twenty Five Thousand Five Hundred and Ninety Dollars (\$25,590.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this CA. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
118. The civil penalty settlement amount set forth in the paragraph immediately above was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner, entitled *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after January 30, 1997 and prior to March 15, 2004 are subject to a 10% increase (not to exceed a \$27,500.00 per violation statutory maximum penalty) above the penalty guideline amounts set forth in the RCRA Penalty Policy to account for inflation. Penalties for RCRA violations occurring after March 15, 2004 and before January 13, 2009 are subject to an additional 17.23% increase (not to exceed a \$32,500.00 per violation statutory maximum penalty) above the penalty guideline amounts set forth in the RCRA Penalty Policy to account for subsequent inflation. The violations herein alleged occurred after March 15, 2004 and before January 13, 2009 and the civil penalty

settlement amount set forth in the paragraph immediately above was further determined in consideration of the applicable penalty inflation adjustments, pursuant to 40 C.F.R. Part 19 and as provided in the Skinner Memorandum.

119. Payment of the civil penalty as required by paragraph 117, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*Docket No. RCRA-03-2010-0069*);

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105

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

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

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD

26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

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

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

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- I. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

120. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo  
Sr. Assistant Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

121. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
122. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
123. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

124. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
125. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

#### **V. CERTIFICATIONS**

126. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the authorized WVHWMR and HAPTSDR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

#### **VI. OTHER APPLICABLE LAWS**

127. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

#### **VII. RESERVATION OF RIGHTS**

128. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

#### **VIII. FULL AND FINAL SATISFACTION**

129. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA.

**IX. PARTIES BOUND**

130. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

**X. EFFECTIVE DATE**

131. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

**XI. ENTIRE AGREEMENT**

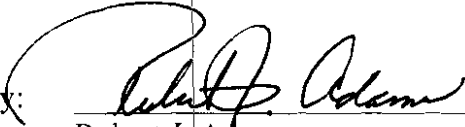
132. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent American Woodmark Corporation:

Date:

25 January 2010

By:

  
Robert J. Adams  
V.P. Engineering  
American Woodmark Corporation

American Woodmark Corporation  
EPA Facility I.D. #WVD981738909

Consent Agreement  
Docket No. RCRA-03-2010-0069

For the Complainant:

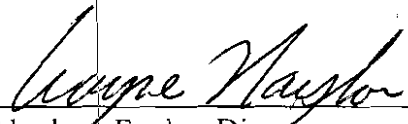
U.S. Environmental Protection Agency, Region III

Date: 1/26/2010

By:   
A.J. Di Angelo  
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached FO.

Date: 1/28/10

By:   
for Abraham Ferdas, Director  
Land and Chemicals Division

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

<b>In Re:</b>	)	
	)	
<b>American Woodmark Corporation</b>	)	<b>Docket No. RCRA-03-2010-0069</b>
<b>3102 Shawnee Drive</b>	)	
<b>Winchester, VA 22601-4208,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>Proceeding Under Section</b>
	)	<b>3008(a) and (g) of the</b>
<b>American Woodmark Corporation</b>	)	<b>Resource Conservation and</b>
<b>390 Industrial Park Blvd.</b>	)	<b>Recovery Act, as amended,</b>
<b>Moorefield, WV 26836</b>	)	<b>42 U.S.C. § 6928(a) and (g)</b>
<b>EPA Facility I.D. # WVD981738909,</b>	)	
	)	
<b>FACILITY.</b>	)	

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, American Woodmark Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended, *inter alia*, by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter



as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the *Consolidated Rules of Practice*, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of Twenty Five Thousand Five Hundred and Ninety Dollars (\$25,590.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C. § 6928(a), IT IS HEREBY ORDERED that Respondent pay a civil monetary penalty of Twenty Five Thousand Five Hundred and Ninety Dollars (\$25,590.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

2/4/2010  
Date

*Renee Sarajian*

Renee Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III

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

In Re: )  
)  
American Woodmark Corporation ) Docket No. RCRA-03-2010-0069  
3102 Shawnee Drive )  
Winchester, VA 22601-4208, )  
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RESPONDENT. ) Proceeding Under Section  
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American Woodmark Corporation ) Resource Conservation and  
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Moorefield, WV 26836 ) 42 U.S.C. § 6928(a) and (g)  
EPA Facility I.D. # WVD981738909, )  
)  
FACILITY. )

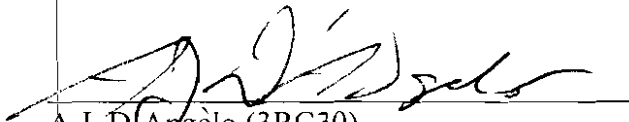
**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5<sup>th</sup> Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid, to the following persons at the following addresses:

Mr. Robert J. Adams  
V.P. Engineering  
American Woodmark Corporation  
P.O. Box 1980  
Winchester, Virginia 22604-4280  
(Article No. 7004 2890 0000 5075 7019)

Mr. Mark Seals  
Plant Manager  
American Woodmark Corporation  
390 Industrial Park Blvd.  
Moorefield, WV 26836  
(Article No. 7004 2890 0000 5075 7026)

2/4/2010  
Date

  
A.J. D'Angelo (3RC30)  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Tel. (215) 814-2480