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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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In Re:)
)
Powercon Corporation)
1551 Florida Ave.)
Severn, MD 21140-2603,)
)
RESPONDENT.)
)
Powercon Corporation)
1551 Florida Ave.)
Severn, MD 21140-2603,)
EPA Facility I.D. # MDD003067402,)
)
FACILITY.)

Docket No. RCRA-03-2015-0035

Proceeding Under Section
3008(a) and (g) of the
Resource Conservation and
Recovery Act, as amended,
42 U.S.C. § 6928(a) and (g)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Powercon Corporation, ("Respondent"), 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 by *inter alia*, 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 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO"), collectively referred to herein as the "CAFO," simultaneously commences and concludes this administrative proceeding against Respondent.
3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland has been granted final authorization to administer its hazardous waste management program, set forth at the Code of Maryland Regulations ("COMAR"),

Title 10, Subtitle 51 *et seq.*, *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. The State of Maryland Hazardous Waste Management Regulations (“MdHWMR”) originally were authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13, were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised federally-authorized program have thereby become requirements of RCRA Subtitle C are enforceable by the United States Environmental Protection Agency (“EPA” or the “Agency”) pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

4. The State of Maryland has not been granted authorization to administer portions of its hazardous waste management program in lieu of certain provisions of the Hazardous and Solid Waste Amendments (“HSWA”) enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. As specifically related to this proceeding, Maryland has not been granted authorization to administer the Universal Waste Lamp provisions of COMAR 26.13.10.09 as part of the federally-authorized MdHWMR requirements. Consequently, pursuant to RCRA Section 3006(g), 42 U.S.C. § 6926(g), Universal Waste Lamps are deemed to be regular hazardous wastes for federal enforcement by EPA in Maryland.
5. Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized MdHWMR requirements cite those respective provisions as the authority for such allegations or conclusions. Factual allegations or legal conclusions in this CA that are based solely on provisions of the federal hazardous waste management program for which the State of Maryland has not yet received authorization alternatively cite the associated federal provisions as the authority for those particular allegations or conclusions.
6. 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. §§ 6921-6939g, and federally-authorized MdHWMR requirements, at its facility located at 1551 Florida Ave., Severn, MD 21140-2603, EPA Facility I.D. # MDD003067402.
7. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated December 10, 2013, EPA notified the State of Maryland (hereinafter, the “State”), through the Solid Waste Program Administrator of the Maryland Department of the Environment (“MDE”), 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

8. Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 8, immediately above, of this

CA.

10. 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.
11. 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.
12. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
13. Respondent shall bear its own costs and attorneys' fees.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

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:

14. Respondent Powercon Corporation is a corporation organized under the laws of the State of Maryland which does business in the State of Maryland, is a "person" as defined by RCRA Section 1004(15), 42 U.S.C. Section 6903(15) and COMAR 26.13.01.03B(61) and has a principal office located at 1551 Florida Avenue, Severn, Maryland 21144-2603.
15. Respondent is, and has been, the "operator" and the "owner" of a metal-clad and metal-enclosed switchgear manufacturing facility located at 1551 Florida Avenue, Severn, Maryland 21144-2603, EPA Facility I.D. # MDD003067402 ("Facility"), as these terms are defined by COMAR 26.13.01.03.B (58) and (59), during the period of the violations alleged in this CA.
16. At the Facility, the Respondent engages in the manufacture of metal-clad and metal-enclosed switchgears.
17. As described below and at all times relevant to the allegations set forth in this CAFO, Respondent has been a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in COMAR 26.13.01.03.B(29), (73) and (31), and has engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]" at the Facility, as those terms are defined in COMAR 26.13.01.03.B(76), (73), (31) and (9).
18. The Facility is, and at all times herein relevant has been, a hazardous waste storage "facility" as that term is defined in COMAR 26.13.01.03B(23).
19. Respondent submitted to EPA a Notification of Hazardous Waste Activity ("Notification"), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which includes operation as a large quantity generator of hazardous waste.

20. Duly authorized representatives of EPA (“EPA Inspectors”) performed a compliance evaluation inspection (“CEI”) at the Facility and conducted file reviews of certain Facility records on June 26, 2013 in order to assess the Respondent’s compliance with federally-authorized MdHWMR requirements at the Facility.
21. On March 17, 2014, EPA issued a combination “Request to Show Cause” and “Request for Information” letter (“Request Letter”) to Respondent pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). In its Request Letter, EPA advised Respondent of EPA’s preliminary findings of MdHWMR violations at the Facility, requested that Respondent provide certain specified information in furtherance of its CEI at the Facility, and additionally offered Respondent the opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s MdHWMR compliance status at the Facility.
22. Respondent provided written responses to EPA’s Request Letter on May 14, 2014 (“Response Letter”).
23. On the basis of the information collected by EPA during the Facility CEI and file review, as well as information provided in Respondent’s Response Letter, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and federally-authorized MdHWMR requirements promulgated thereunder.

Permit/Interim Status Requirements

24. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01, with exceptions not relevant to this matter, 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.
25. At no time did the Respondent have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or COMAR 26.13.07.01, for the storage of hazardous waste at the Facility.
26. At no time did Respondent have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or COMAR 26.13.07.23.

Permit Exemption Conditions - Accumulation Time Requirements

27. COMAR 26.13.03.05E(1) provides, in relevant part, that a generator may accumulate hazardous waste on-site in containers or in tanks without a permit or without having interim status, for 90 days or less, so long as the hazardous waste is accumulated in accordance with a number of conditions set forth in that section, including, *inter alia*:
 - a. the condition set forth at COMAR 26.13.03.05E(1)(d), which requires that waste in containers must be accumulated in accordance with COMAR 26.13.05.09, which includes provisions pertaining to “Inspections”, which are set forth at COMAR

26.13.05.09E, and which further require that “[t]he owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors[;]” and

- b. the condition set forth at COMAR 26.13.03.05E(1)(g), which requires, in relevant and applicable part, that “[t]he generator complies with the requirements for owners and operators in COMAR 26.13.05.02G . . . and .04[.]” pertaining to: “Personnel Training,” including, but not limited to, the initial program of instruction or training requirements of COMAR 26.13.05.02G(1) and (2), the annual training review requirements of COMAR 26.13.05.02G(3), the associated record maintenance requirements of COMAR 26.13.05.02G(4)(a) – (c) and (5), and; “Contingency Plan and Emergency Procedures,” including the Contingency Plan content requirements of COMAR 26.13.05.04.

COUNT I

(Operating Without a Permit or Interim Status)

28. The allegations of Paragraphs 1 through 27 of this CA are incorporated herein by reference.
29. The permit exemption conditions of COMAR 26.13.03.05E(1)(g) incorporate owner and operator inspection requirements which are set forth at COMAR 26.13.05.09E and which provide that “[t]he owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.”
30. At all times relevant to the allegations herein, including the period from at least August 1, 2010 through at least June 26, 2013, Respondent continuously has stored characteristic and listed hazardous wastes identified as D001 (characteristic for ignitability), D005 (characteristic for toxicity – barium), D006 (characteristic for toxicity – cadmium), D008 (characteristic for toxicity – lead), D009 waste lamp bulbs (characteristic for toxicity - mercury), D036 (characteristic for toxicity – nitrobenzene), D039 (characteristic for toxicity – tetrachlorethylene), F003 and F005 (various types of spent non-halogenated solvents) in containers at its Facility.
31. Respondent failed to conduct weekly inspections of the Facility’s less than 90-day hazardous waste container storage area, where hazardous wastes regularly and routinely were stored, to look for leaks and for deterioration of containers, as required pursuant to COMAR 26.13.05.09E, during each of the following time periods: August 1, 2010 – Dec. 30, 2010; January 1, 2011 – September 1, 2011; September 26, 2011 – December 31, 2011; January 1, 2012 – May 25, 2012; June 9, 2012 – June 22, 2012; July 7, 2012 – July 20, 2012; Aug. 4, 2012 – Sept. 14, 2012; Sept. 29, 2012 – Oct. 26, 2012; Nov. 24, 2012 – Dec. 7, 2012; Dec. 22, 2012 – Dec. 31, 2012; January 1, 2013 – March 30, 2013; April 12, 2013 – April 27, 2013; and May 11, 2013 – May 25, 2013.
32. The permit exemption conditions of COMAR 26.13.03.05E(1)(g) incorporate owner and operator compliance requirements which are set forth in COMAR 26.13.05.02G, entitled “Personnel Training,” and which provide, in relevant and applicable part, as follows:

(1) Program of Instruction or Training.

(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter [and that] [t]he owner or operator shall ensure that this program includes all the elements described in the document required under [COMAR 26.13.05.02] § G(4)(c)

(b) This program shall . . . include instruction which teaches facility personnel hazardous waste management procedures . . . relevant to the positions in which they are employed.

(c) At a minimum the training shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems

(2) Facility personnel shall successfully complete the program required in [COMAR 26.13.05.02] § G(1), above, within 6 months after the effective date of these regulations or 6 months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later

(3) Facility personnel shall take part in an annual review of the initial training required in [COMAR 26.13.05.02] § G(1), above.

(4) The owner or operator shall maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of each employee filling each job.

(b) A written job description for each position listed under [COMAR 26.13.05.02] § G(4)(a), above

(c) 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 under [COMAR 26.13.05.02] § G(4)(a), above.

(d) Records that document that the training or job experience required under [COMAR 26.13.05.02] § G(1), (2), and (3) has been given to, and completed by, facility personnel.

(5) Training records on current personnel shall be kept until closure of the facility....

33. Respondent was in contravention of the permit exemption conditions set forth at COMAR 26.13.03.05E(1)(g) as a result of its failure to comply with applicable personnel training

requirements of COMAR 26.13.05.02G through its failure to:

- a. provide initial hazardous waste training, required pursuant to COMAR 26.13.05.02G(1)(a) – (c), to four (4) Facility employees that were managing hazardous waste at the Facility on and prior to June 26, 2013, within six months of the date of their employment or assignment to the Facility, as required pursuant to COMAR 26.13.05.02G(2);
 - b. provide required annual reviews of the hazardous waste training required pursuant to COMAR 26.13.05.02G(1), to each of five (5) employees who managed hazardous waste at the Facility during each of the 2011, 2012, 2013 and 2014 calendar years, as required pursuant to COMAR 26.13.05.02G(3); and
 - c. maintain the following documents and records at the Facility at the time of the June 26, 2013 CEI, as required pursuant to COMAR 26.13.05.02G(4):
 - i. the job title for each position at the Facility related to hazardous waste management, and the name of each employee filling each job;
 - ii. a written job description for each position at the Facility related to hazardous waste management;
 - iii. a written description of the type and amount of introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management; and
 - iv. records documenting that required training or job experience required under COMAR 26.13.05.02 G(1), (2), and (3) had been given to, and completed by, current Facility personnel in hazardous waste management positions, which records are required to be maintained for at least 3 years from the date that each employee last worked at the Facility (pursuant to COMAR 26.13.05.02 G(5)).
34. The permit exemption conditions of COMAR 26.13.03.05E(1)(g) require, in relevant and applicable part, that a generator of hazardous waste must comply with “the requirements for owners and operators” in COMAR 26.13.05.04 pertaining to the “Contingency and Emergency Procedures,” as follows:
- A. Applicability. This regulation applies to owners and operators of all hazardous waste facilities [with an exception not herein applicable].
 - B. Purpose and Implementation of Contingency Plan.
 - (1) Every owner or operator shall have a contingency plan for his facility . . . designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. . . .

C. Content of Contingency Plan.

(1) The contingency plan shall describe the actions facility personnel shall take . . . in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility[;]

* * *

(4) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator . . . and this list shall be kept up to date[;]

(5) The plan shall include a list of emergency equipment at the facility[; and]

(6) The plan shall include an evacuation plan for facility personnel

D. Copies of Contingency Plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility

35. During the June 26, 2013 CEI, the EPA Inspectors reviewed the Facility Contingency Plan, dated January 8, 2008.
36. On June 26, 2013, Respondent was in contravention of the permit exemption conditions set forth at COMAR 26.13.03.05E(1)(g) as a result of its failure to include, within the January 8, 2008 Facility Contingency Plan: (i) the name, address and phone number (home and office) for those individual(s) qualified to act as an emergency coordinator; (ii) a list of emergency equipment and diagram and layout of the facility; and (iii) an evacuation plan and exit route, as required pursuant to COMAR 26.13.05.04C(4), (5) and (6).
37. For the reasons and during each of the dates and time periods identified in Paragraphs 32 through 36, above, Respondent failed to comply with the permit exemption conditions set forth in COMAR 26.13.03.05E(1)(d) and E(1)(g), as identified in Paragraph 29, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator at the Facility, as required pursuant to COMAR 26.13.03.05E(1), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
38. For each of the reasons and during each of the dates and time periods identified in Paragraphs 32 through 36, above, Respondent engaged in the operation of a hazardous waste storage facility (*i.e.*, the Facility) without having interim status or obtaining a permit for the Facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or COMAR 26.13.07.
39. Respondent violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. §

6925(a), by operating a hazardous waste storage facility (*i.e.*, the Facility) without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II

(Failure to Conduct Weekly Hazardous Waste Container Storage Area Inspections)

40. The allegations of Paragraphs 1 through 39 of this CA are incorporated herein by reference.
41. The provisions of COMAR 26.13.05.09E pertaining to “Inspections” require that: “[t]he owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.”
42. Respondent failed to conduct required weekly inspections of its less than 90-day hazardous waste container storage area, where hazardous wastes regularly and routinely have been stored, to look for leaks and for deterioration of containers, during each of the particular time periods identified, with specificity, in Paragraph 31, above.
43. Respondent violated the requirements of COMAR 26.13.05.09E by failing to conduct required weekly inspections of its less than 90-day hazardous waste container storage area, where hazardous wastes regularly and routinely have been stored, to look for leaks and for deterioration of containers, during each of the time periods identified in paragraph 31, above.

COUNT III

(Failure to Comply with Personnel Training Requirements)

44. The allegations of Paragraphs 1 through 43 of this CA are incorporated herein by reference.
45. The requirements and provisions of COMAR 26.13.05.02.G(1) through (3), pertaining to the “Personnel Training” requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, are set forth, in relevant and applicable part, in paragraph 32, above.
46. Respondent violated the initial hazardous waste personnel training requirements of COMAR 26.13.05.02G(1) and (2) by failing to provide initial hazardous waste training, required pursuant to COMAR 26.13.05.02G(1)(a) – (c), to four (4) Facility employees that were managing hazardous waste at the Facility on and prior to June 26, 2013 (as previously identified in Paragraph 33.a, above), within six months of the date of their employment or assignment to the Facility, as required pursuant to COMAR 26.13.05.02G(2).
47. Respondent violated the hazardous waste personnel training annual review requirements of COMAR 26.13.05.02G(3) by failing to provide required annual reviews of the hazardous waste training required pursuant to COMAR 26.13.05.02G(1) to each of five (5) employees who managed hazardous waste at the Facility during each of the 2011, 2012, 2013 and 2014 calendar years (as previously identified and described in Paragraph 33.b, above).

COUNT IV

(Failure to Comply with Personnel Training Recordkeeping Requirements)

48. The allegations of Paragraphs 1 through 47 of this CA are incorporated herein by reference.
49. The personnel training recordkeeping requirements and provisions of COMAR 26.13.05.02.G(4) and (5), applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, are set forth, in relevant and applicable part, in paragraph 32, above.
50. Respondent violated the personnel training recordkeeping requirements of COMAR 26.13.05.02G(4) by failing to maintain the following documents and records, previously described in Paragraph 33.c, above, at the Facility at the time of the June 26, 2013 CEI:
 - i. the job title for each position at the Facility related to hazardous waste management, and the name of each employee filling each job;
 - ii. a written job description for each position at the Facility related to hazardous waste management;
 - iii. a written description of the type and amount of introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management; and
 - iv. records documenting that required training or job experience required under COMAR 26.13.05.02 G(1), (2), and (3) had been given to, and completed by, current Facility personnel in hazardous waste management positions, which records are required to be maintained for at least 3 years from the date that each employee last worked at the Facility (pursuant to COMAR 26.13.05.02 G(5)).

COUNT V

(Failure to Comply with Contingency Plan Preparation and Maintenance Requirements)

51. The allegations of Paragraphs 1 through 50 of this CA are incorporated herein by reference.
52. The requirements and provisions of COMAR 26.13.05.04, pertaining to “Contingency and Emergency Procedures” requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, are set forth, in relevant and applicable part, in paragraph 34, above.
53. Respondent violated the Contingency and Emergency Procedures “Content of Contingency Plan” requirements of COMAR 26.13.05.04C on June 26, 2013, as previously described in Paragraph 36, above, as a result of its failure to include, within the January 8, 2008 Facility Contingency Plan: (i) the name, address and phone number (home and office) for those individual(s) qualified to act as an emergency coordinator; (ii) a list of emergency

equipment and diagram and layout of the facility; and (iii) an evacuation plan and exit route, as required pursuant to COMAR 26.13.05.04C(4), (5) and (6).

COUNT VI
(Failure to Properly Label Universal Waste Batteries)

54. The allegations of Paragraphs 1 through 53 of this CA are incorporated herein by reference.
55. Pursuant to COMAR 26.13.10.07A, with exceptions not herein applicable, the requirements of COMAR 26.13.10.06 -- .25, pertaining to standards for universal waste management, apply to persons managing: (1) Batteries, as defined in COMAR 26.13.01.03B.
56. Pursuant to COMAR 26.13.01.03B(4-1), the term “[b]attery” means: “(a) A device consisting of one or more electrochemical cells which is designed to receive, store, and deliver electric energy; or (b) An intact, unbroken device, which would otherwise meet the definition of battery in §B(4-1)(a) of this regulation from which the electrolyte has been removed.”
57. Pursuant to COMAR 26.13.01.03B(89-2)(a), the term “[u]niversal waste handler” includes “(i) A generator of universal waste. . .”.
58. Pursuant to COMAR 26.13.01.03B(89-1), the term “[u]niversal waste” means, in relevant and applicable part, “any of the following hazardous wastes that are managed under the universal waste requirements of COMAR 26.13.10.06 -- .25: (a) Batteries as described in COMAR 26.13.10.07 . . .”.
59. Pursuant to COMAR 26.13.01.03B(72-2), the term “[s]mall quantity handler of universal waste” means a universal waste handler that does not accumulate 5,000 kilograms or more of universal waste at any time during a calendar year.
60. The general management standards applicable to small quantity handlers of universal waste include labeling and marking requirements, at COMAR 26.13.10.17A, which provide that: (1) A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified in §A(2) of this regulation. (2) A small quantity handler of universal waste shall: (a) Clearly label or mark each universal waste battery that is not in a container, and each container in which universal waste batteries are being held with one of the following phrases: (i) “Universal Waste – Battery(ies)”; (ii) “Waste Battery(ies)”; or (iii) “Used Battery(ies)”.
61. On June 26, 2013, Respondent was accumulating batteries, as defined in COMAR 26.13.01.03B, for disposal within the meaning of COMAR 26.13.02.02A(2)(a) and COMAR 26.13.10.07C, entitled “Generation of Waste Batteries,” and was a small quantity universal waste handler managing batteries.
62. On June 26, 2013, inside the Facility’s Machine Shop, Respondent was accumulating universal waste batteries for disposal in a 5-gallon container that was not labeled or marked

with any one of the phrases “Universal Waste – Battery(ies),” “Waste Battery(ies)” or “Used Battery(ies),” as required pursuant to COMAR 26.13.10.17A(2)(a).

63. On June 26, 2013, Respondent violated the universal waste small quantity handler general management standards of COMAR 26.13.10.17A(2)(a) by failing to label or mark a container of universal waste batteries, being accumulated at the Facility for disposal, with any one of the phrases “Universal Waste – Battery(ies),” “Waste Battery(ies)” or “Used Battery(ies).”

V. CIVIL PENALTY

64. In settlement of EPA’s claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of FORTY THOUSAND DOLLARS (\$40,000.00), which Respondent agrees to pay in accordance with the payment terms set forth in Paragraph 66, below. Such civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct signed copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent. Respondent further agrees to perform the Supplemental Environmental Project described in this Section, below. To avoid the payment of additional stipulated penalties, Respondent must perform the Supplemental Environmental Project, described below, in accordance with the provisions of this CA.
65. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant’s consideration of a number of factors, including the penalty criteria 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 Sections 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 November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
66. Payment of the civil penalty as required by paragraph 64, above, and any associated interest, administrative costs and/or late payment penalties owed in accordance with the provisions of paragraphs 68, 69, 70 and/or 71, below, 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, address and the Docket Number of this action (*Docket No. RCRA-03-2015-0035*).

- b. All checks shall be made payable to “**United States Treasury**”.
- c. All payments made by check and sent by Regular U.S. Postal Service 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
- Customer service contact: 513-487-2091
- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:
- U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
- Contact: 314-418-1818
- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:
- Cincinnati Finance
US 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 No. = 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: 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://www2.epa.gov/financial/makepayment>

67. At the time of payment, Respondent simultaneously shall send a notice of *each* payment, including a copy of the check or electronic wire transfer, as applicable, to:

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

and

T. Chris Minshall, Esq.
Sr. Assistant Regional Counsel
Waste and Chemical Law Branch (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

68. 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.
69. 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).
 70. 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.
 71. 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).
 72. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

Supplemental Environmental Project

73. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, effective May 1, 1998, and EPA's Supplemental Environmental Projects Policy 2015 Update, issued March 10, 2015.
74. Respondent agrees to install and operate a Fluidkleen Aqueous Fluid Conditioning Unit ("Unit") that skims tramp oils and metal fines from the cutting fluid used in the Facility's machines, which prior to this settlement had been the largest source of hazardous waste in the Facility. By using the Unit, the cutting fluid is skimmed, filtered, aerated and becomes reusable. The result is a reduction of more than two thirds in the current hazardous waste being sent offsite for disposal. As an integral part of this SEP, Respondent shall operate the Unit, during the time period specified in subparagraph 74.b, according to the manufacturer's specifications and operating manual and shall document any problems encountered in the operation of the Unit during such time period. In addition, Respondent shall:
 - a. Timely identify, apply for, and obtain any required federal, state, and/or local permits necessary for performing the SEP, including without limitation, permits for construction, installation, and operation of pollution control equipment.

- c.** A full and complete itemization of SEP costs;
 - i.** In itemizing its costs in the Preliminary SEP Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.
 - ii.** Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such.
 - iii.** For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.
- d.** Respondent shall, by its representative officers, sign the Preliminary SEP Report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.
- e.** Respondent agrees that failure to submit the written Preliminary SEP Report required by this Paragraph 78 shall be deemed a violation of this CAFO and, in such event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 83 through 85, below.

- 79.** Respondent shall submit a written SEP Completion Report to EPA for the SEP, c/o Eric Greenwood at the address listed in Paragraph 78, above, within thirty (30) days of operating the Unit for three calendar years. The SEP Completion Report shall contain the following information:
- a.** Respondent’s certification that the Unit has been operating properly for three calendar years;
 - b.** A description of any operation problems encountered and the solutions thereto;
 - c.** Documentation of any reduction in hazardous waste generated at its Facility in

the manner described in subparagraph 74.c, above;

- i.** Copies of all Facility hazardous waste manifests, along with a summary table, for the three years immediately prior to installation of the Unit; and
- ii.** Copies of all Facility hazardous waste manifests, along with a summary table, for the three years immediately after installation of the Unit.

- d.** Respondent shall, by its representative officers, sign the SEP Completion Report required by this Paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- e.** Respondent agrees that failure to submit the written SEP Completion Report required by this Paragraph 79 shall be deemed a violation of this CAFO and, in such event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 83 through 85, below.

80. Respondent agrees that EPA may inspect the facility at which this SEP is being implemented at reasonable times in order to confirm that this SEP is being undertaken in conformity with the requirements of this CAFO.

81. Upon receipt of the written Preliminary SEP Report identified in Paragraph 78, above, or the SEP Completion Report identified in Paragraph 79, above, EPA will provide written notification to the Respondent of one of the following:

- a.** If the Preliminary SEP Report or the SEP Completion Report are deficient, notify the Respondent in writing that the report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;
- b.** If the Preliminary SEP Report or the SEP Completion Report demonstrate that the Unit has not been installed or operated in accordance with this CAFO, EPA will notify the Respondent, in writing, that EPA has concluded that the SEP is not compliant with the requirements of this CAFO and EPA may seek stipulated penalties in accordance with Paragraphs 83 through 85, below; or
- c.** If the Preliminary SEP Report or the SEP Completion Report demonstrate that the Unit has been installed or operated in accordance with the CAFO, EPA will

notify the Respondent, in writing, that EPA has concluded that the Unit has been installed and operated in accordance with this CAFO.

82. If EPA provides notification in accordance with Paragraph 81(a), above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach an agreement on changes necessary to the Preliminary SEP Report or the SEP Completion Report. If agreement cannot be reached within this thirty (30) calendar day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of EPA's decision on the adequacy of the report, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed in accordance with the requirement of this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent, upon demand by EPA, in accordance with Paragraphs 83 through 85, below.

Stipulated Penalties

83. In the event that Respondent fails to comply with any of the terms or conditions of this CA relating to the performance of the SEP, described in Paragraph 74, above, submission of the written Preliminary SEP Report, described in Paragraph 78, above, or the SEP Completion Report, described in Paragraph 79, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 75, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. Except as provided in Subparagraph 83.b below, if the Unit has not been installed and operated satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of TWO THOUSAND SIX HUNDRED AND NINETY FIVE DOLLARS (\$2,695.00);
 - b. If the SEP is not completed in accordance with Paragraph 74, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to install and operate the Unit; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - c. If the Unit is installed and operated in accordance with Paragraph 74, above, and the Preliminary SEP Report and the SEP Completion Report are submitted in accordance with Paragraphs 78 and 79, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to EPA in the amount of TWO THOUSAND SIX HUNDRED AND NINETY FIVE DOLLARS (\$2,695.00);
 - d. If the SEP is completed in accordance with Paragraph 74, above, the Preliminary SEP Report and the SEP Completion Report are submitted in accordance with

Paragraphs 78 and 79, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent on the SEP. Respondent shall not be liable for any stipulated penalty; and

- e. If Respondent fails to submit the Preliminary SEP Report, required by Paragraph 78, above, or the SEP Completion Report, required by Paragraph 79, above, Respondent shall pay a stipulated penalty in the amount of \$200.00 for each calendar day after the report was originally due until the report is submitted.

- 84. The determination of whether the Unit has been satisfactorily installed and operated, and whether the Respondent has made a good faith, timely effort to install and operate the Unit, shall be in the sole discretion of EPA.
- 85. Respondent shall pay stipulated penalties, in accordance with Paragraph 83, above, and in the manner described in Paragraph 66, above, not more than fourteen (14) calendar days after receipt of written demand from EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 68 through 71, above.

V. CERTIFICATIONS

- 86. Respondent certifies to Complainant by its respective representative's signatures hereto, to the best of its knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the federally-authorized MdHWMR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

- 87. 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

- 88. 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(s), 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

- 89. 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. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

IX. PARTIES BOUND

90. 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 the Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

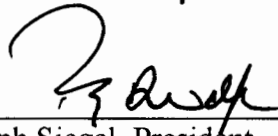
91. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XI. ENTIRE AGREEMENT

92. 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.

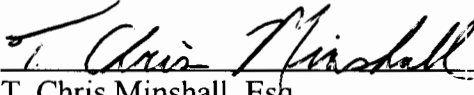
For the Respondent:

Date: 8/21/15

Powercon Corporation
By: 
~~Ralph Siegel, President~~ Roger Wolfe,
Powercon Corporation Chief Financial Officer

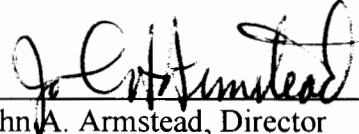
For the Complainant:

Date: 9/3/2015

By: 
T. Chris Minshall, Esq.
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

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 Final Order.

Date: 9.8.15

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

RECEIVED

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

Powercon Corporation
1551 Florida Ave.
Severn, MD 21140-2603

Respondent

Powercon Corporation
1551 Florida Ave.
Severn, MD 21140-2603

Facility

Docket No. RCRA-03-2015-0035

FINAL ORDER

Proceeding under RCRA Section
3008(a)(1) and (g), 42 U.S.C.
§ 6928(a)(1) and (g)

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Powercon 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.

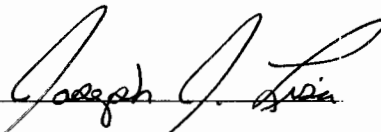
NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the penalty agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of **FORTY THOUSAND DOLLARS (\$40,000.00)**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

In the Matter of:
Powercon Corporation

Docket No. RCRA-03-2015-0035

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.

Date: Sept. 21, 2015



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

**In the Matter of:
Powercon Corporation**

Docket No. RCRA-03-2015-0035

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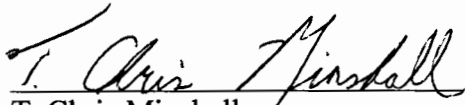
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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

I hereby certify that on this 22nd day of September 2015, I sent a copy of the foregoing CONSENT AGREEMENT and FINAL ORDER by UPS, to the following person:

Jonas Jacobsen, Esq.
Perry, White, Ross and Jacobson, LLC
125 Cathedral Street
Annapolis, MD 21401



T. Chris Minshall
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III