

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA, PA

In the Matter of:)	EPA Docket No. CAA-03-2014-0043
James Austin Company)	
115 Downieville Road)	
Mars, Pennsylvania 16046,)	
)	
Respondent.)	Proceedings Pursuant to Sections
)	112(r) and 113 of the Clean Air Act,
115 Downieville Road)	42 U.S.C. §§ 7412(r) and 7413
Mars, Pennsylvania 16046,)	
)	
Facility.)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413, and under the authority of 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. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT

5. James Austin Company ("Respondent") is the owner and operator of a household cleaning and laundry aid manufacturing plant located at 115 Downieville Road in Mars, Pennsylvania (the "Facility").
6. Respondent is incorporated in the Commonwealth of Pennsylvania with its principal place of business located at 115 Downieville Road in Mars, Pennsylvania.
7. The Facility is located in a mixed suburban industrial/residential area. Upon information and belief, approximately 1,000 people live within eight-tenths (8/10) of a mile of the Facility.
8. Respondent submitted to EPA a Risk Management Plan ("RMP") for the Facility dated June 16, 1999. Respondent subsequently submitted revised RMPs for the Facility on June 16, 2004, August 31, 2004, and August 18, 2009.
9. Respondent has been the operator of the Facility for sixty-six (66) years.
10. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
11. Section 112(r) to the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the

Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

12. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in an RMP that must be submitted to EPA. The RMP must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

13. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

14. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

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

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

17. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

18. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of

such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

19. EPA conducted an inspection of the Facility on April 27, 2011, to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

20. The Facility manufactures household cleaning and laundry aids such as bleach, ammonia, dish soaps, fabric softeners, laundry detergents, and window cleaners. The products are produced by dilution and/or blending of concentration raw products such as chlorine and aqueous ammonia.

21. The Facility handles and/or stores and has handled and/or stored chlorine, Chemical Abstracts Service ("CAS") Number 7782-50-5, since at least 1999 and at all times relevant to this Order.

22. The Facility has handled and/or stored ammonia (concentration 20% or greater), CAS Number 7664-41-7, since at least 1999, until January 30, 2012.

23. The maximum amount of chlorine stored onsite in railcars at the Facility is 360,000 pounds.

24. At the time of the inspection, the Facility stored approximately 98,280 pounds of aqueous ammonia, at a concentration of 29.4%.

25. On January 30, 2012, the Facility reduced the ammonia concentration in its aqueous ammonia solution to 15%.

26. The Standard Industrial Classification code for the Facility is 2841 (soaps and cleaning compound manufacturing) and the North American Industrial Classification System code for the Facility is 325610 (soaps and cleaning compound manufacturing).

27. The inspection revealed a number of concerns at the Facility, including the following:

- a. Respondent failed to compile written process safety information related to the equipment in the aqueous ammonia process, including a piping and instrument diagram and design codes and standards, as required by 40 C.F.R. § 68.65(d)(ii) and (vi).
- b. Respondent failed to perform process hazard analyses for the aqueous ammonia process and the chlorine process the Facility, as required by 40 C.F.R. § 68.67.

- c. During the inspection, Respondent did not provide documentation of initial training and refresher training for operators of the chlorine and aqueous ammonia processes, as required by 40 C.F.R. § 68.71.
- d. During the inspection, Respondent did not provide documentation of maintenance procedures to maintain the mechanical integrity of the aqueous ammonia process, as required by 40 C.F.R. § 68.73.
- e. Respondent failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that effect a covered process, as required by 40 C.F.R. § 68.75, for the Powell bleach-making process equipment.
- f. Respondent failed to perform a pre-startup safety review for the Powell bleach-making process equipment and the aqueous ammonia process, as required by 40 C.F.R. § 68.77.
- g. Respondent failed to certify that it had evaluated compliance with the provisions of 40 C.F.R. § 68.79 at least every three years to verify that procedures and practices developed under 40 C.F.R. Part 65, Subpart D, were adequate and were being followed.
- h. Respondent failed to consult with its employees and their representatives on the conduct and development of process hazard analyses and on the development of the other elements of process safety management, as required by 40 C.F.R. §68.83.

28. On December 7, 2011, EPA issued a Unilateral Administrative Order, EPA Docket No. CAA-03-2012-0054DA ("Order"), to Respondent pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). The Order required Respondent to address the issues identified in the Order pursuant to a submitted schedule, and to submit a final report upon completion.

29. Pursuant to the Order, Respondent has submitted reports to EPA indicating that Respondent has corrected the identified issues. Respondent completed the work under the Order to the satisfaction of EPA and, on October 3, 2012, EPA terminated the Order.

30. EPA's investigation indicates that, prior to Respondent's compliance with the Order, the company failed to satisfy the requirements of 40 C.F.R. Part 68 to fully implement a Program 3 Risk Management Program for the Facility. Respondent failed to comply with the following requirements of Subpart D of 40 C.F.R. Part 68:

- a. Compile and maintain up-to-date safety information related to the aqueous ammonia process equipment, in violation of 40 C.F.R. § 68.48(a)(3).

- b. Conduct a complete process hazard review for the aqueous ammonia process, in violation of 40 C.F.R. § 68.50(a).
- c. Conduct refresher training, as required by 40 C.F.R. § 68.54(b), in violation of 40 C.F.R. § 68.200.
- d. Prepare and implement maintenance procedures to maintain the mechanical integrity of the aqueous ammonia process, as required by 40 C.F.R. § 68.73.
- e. Prepare and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that effect a covered process, as required by 40 C.F.R. § 68.75, for the Powell bleach-making process equipment.
- f. Conduct a pre-startup safety review for the Powell bleach-making process equipment and the aqueous ammonia process, as required by 40 C.F.R. § 68.77.
- g. Demonstrate that compliance audits were conducted every three years, in violation of 40 C.F.R. § 68.79.
- h. Consult with its employees and their representatives on the conduct and development of process hazard analyses and on the development of the other elements of process safety management, as required by 40 C.F.R. § 68.83.

31. On November 7, 2013, Respondent submitted a letter to EPA containing additional information which, in its opinion, addressed many of the requirements set forth above.

32. EPA took into consideration the information presented by Respondent in its November 7, 2013 letter to EPA.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

33. The findings of fact contained in Paragraphs 5 through 32 of this CA/FO are incorporated by reference herein as though fully set forth at length.

34. Chlorine is a regulated substance pursuant to Section 112(r)(2) and (3) of the Clean Air Act, and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 2,500 pounds.

35. Ammonia (concentration greater than 20%) is a regulated substance pursuant to Section 112(r)(2) and (3) of the Clean Air Act, and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 20,000 pounds.

36. At all times relevant to this Consent Agreement, chlorine has been present in a process at the Facility in levels exceeding its threshold quantity.

37. At all times relevant to this Consent Agreement until January 30, 2012, aqueous ammonia (concentration 20% or greater) was present in a process at the Facility in levels exceeding its threshold quantity.

38. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

39. Respondent has been the operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, since approximately 1999.

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

41. The Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

42. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to meet the requirements of Subpart D of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, as set forth in Paragraph 30 above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

43. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as set forth above, in the amount of **\$39,575**.

44. The civil penalty of THIRTY-NINE THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (**\$39,575**) set forth in Paragraph 43, above, may be paid in four (4) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of TEN THOUSAND DOLLARS (\$10,000.00) consisting of a principal payment of \$10,000.00 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- b. 2nd Payment: The second payment in the amount of TEN THOUSAND AND FORTY-NINE DOLLARS AND TWENTY-NINE CENTS (\$10,049.29 consisting of a principal payment of \$10,000.00 and an interest payment of \$49.29, shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

- c. 3rd Payment: The third payment in the amount of TEN THOUSAND AND SIXTEEN DOLLARS AND THIRTY-ONE CENTS (\$10,016.31) consisting of a principal payment of \$10,000.00 and an interest payment of \$16.31, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and
- d. 4th Payment: The fourth payment in the amount of NINE THOUSAND, FIVE HUNDRED EIGHTY-TWO SEVEN DOLLARS AND NINETY-SEVEN CENTS (\$9,007.97) consisting of a principal payment of \$9,575.00 and an interest payment of \$7.97, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of thirty-nine thousand five hundred seventy-five dollars (\$39,575) and total interest payments in the amount of seventy-three dollars and fifty-seven cents (\$73.57).

45. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty and interest cited in the foregoing Paragraph.

PAYMENT TERMS

46. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$39,575, and \$73.57 in interest, due in accordance with the schedule in Paragraph 44, with the first payment due no later than thirty (30) days after the effective date of the Final Order (the "final due date") and subsequent payments due in accordance with the schedule in Paragraph 44 b., 44 c., and 44 d. above 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, *i.e.*, CAA-03-2014-0043;
- 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 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

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

47. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

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

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

48. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

49. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges, including interest beyond that required by this CA/FO, penalties and/or administrative costs of handling delinquent debts.

50. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. EPA does not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within such thirty (30) calendar day period 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). Accordingly, interest payments on each outstanding installment of the civil penalty assessed herein are set forth in Paragraph 44 of this CA/FO.

51. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource 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 final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

52. A penalty charge of six percent per year will be assessed monthly on any portion of any installment payment which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

53. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

54. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

55. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

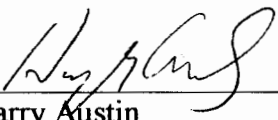
56. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

57. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

58. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or any regulations promulgated thereunder.

59. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

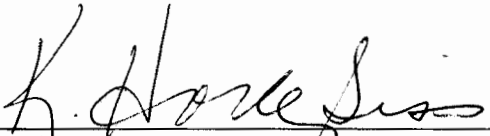
60. Each party to this action shall bear its own costs and attorney's fees.



Harry Austin
President

12/29/2013
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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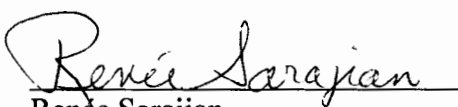
FINAL ORDER

Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ORDERED to pay \$39,575 and otherwise comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date: 1/27/14


Renee Sarajian
Regional Judicial Officer/Presiding Officer