



Management Program”) *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations (“PaHWR”) were authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009 respectively. The PaHWR incorporate, with certain exceptions, federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization, and October 12, 2005 for the April 29, 2009 PaHWR authorization. The provisions of Pennsylvania’s current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. 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 PaHWR requirements, at the Facility.
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated January 20, 2012, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PaDEP”), 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**

6. Respondent admits the jurisdictional allegations set forth in this CAFO.
7. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 6, immediately above.
8. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
9. For the purposes of this proceeding only and to avoid the expense of litigation, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

11. Respondent shall bear its own costs and attorney's fees.

### **III. EPA ALLEGATIONS 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:

12. Respondent is a Delaware corporation.
13. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and 25 PA Code § 260a.10.
14. Respondent is and has at all times relevant to the allegations set forth in this CAFO, been the "owner" and "operator" of a "facility" located at 500 Bailey Crossroads, Atglen, Pennsylvania 19310, as the terms owner and operator are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as the term facility is defined in 25 PA Code § 260a.10.
15. As described below, Respondent is and, at all times relevant to the violations alleged in this CAFO has been, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
16. On November 8, 2011, and November 17, 2011, duly authorized representatives of EPA and PaDEP conducted a compliance evaluation inspection (the November 8, 2011 facility inspection is referenced as the "November 8, 2011 Inspection" while the November 17, 2011 facility inspection is referenced as the "November 17, 2011 Inspection"; collectively the two November 2011 facility inspections are referenced as the "November 2011 Inspections" ) of the Facility to assess compliance with RCRA, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268, and 270-273, and the federally authorized PaHWR requirements.
17. As a follow-up to the November 2011 Inspections, Respondent sent a December 7, 2011 email to EPA with information concerning the storage of hazardous waste at the Facility.
18. On May 2, 2012 and November 2, 2012, EPA sent Respondent letters pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), requesting additional information concerning the operations at the Facility relevant to the alleged violations set forth in this CAFO.
19. In response to EPA's May 2, 2012 and November 2, 2012 RCRA Section 3007(a) information request letters, Respondent submitted information to EPA in letters dated June 13, 2012, July 25, 2012, January 22, 2013.

20. On April 23, 2013, duly authorized representatives of EPA and PaDEP conducted a follow-up inspection of Respondent's Facility (the "April 23, 2013 Inspection") to assess compliance with RCRA, the federal hazardous waste regulations, and the federally authorized PaHWR requirements. As requested by the EPA inspector in the April 23, 2013 Inspection, Respondent sent EPA an updated inventory of hazardous wastes at the Facility's storage magazines.
21. On the basis of the November 2011 Inspections, the April 23, 2013 Inspection and a review of the supplemental information provided to EPA by Respondent in response to EPA's May 2, 2012 and November 2, 2012, RCRA 3007(a) information request letters and other correspondence, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and the federally authorized PaHWR requirements promulgated thereunder.

**Permit Requirements**

22. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, 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.
23. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage or disposal of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

**Permit Exemption Conditions - Accumulation Time/Requirements**

24. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste in containers and/or tanks on-site for 90 days or less (or up to 270 days in the case of certain small quantity generators as per 40 C.F.R. § 262.34 (d) and (e)) 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*:
  - a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts I, AA, BB and CC;
  - b. 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, AA, BB and CC;

- c. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container; and
- d. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words “Hazardous Waste”.

**Regulatory Permit Exemption Conditions - Management of Containers**

- 25. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I, including the provisions of 40 C.F.R. § 265.173(a), which requires that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
- 26. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I, including the provisions of 40 C.F.R. § 265.174, which requires, with exceptions not relevant here, that “[a]t least weekly, the owner or operator must inspect areas where containers are stored....The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.”

**Regulatory Permit Exemption Conditions – Satellite Accumulation**

- 27. 25 Pa. Code § 262a.10 incorporates by reference in 40 C.F.R. § 262.34(a), which further incorporates by reference 40 C.F.R. § 262.34(c)(1), provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 C.F.R. § 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided the generator:
  - a. complies with specified provisions of 40 C.F.R. Part 265, Subpart I (relating to the use and management of containers), specifically, 40 C.F.R. §§ 265.171, 265.172, and 265.173(a); and
  - b. marks the containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

**Regulatory Permit Exemption Conditions - Management of Tanks**

- 28. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart J, including the provisions of 40 C.F.R. § 265.192(a), which requires, with exceptions not relevant here, that “[t]he owner or operator [of new tank systems] must obtain a written assessment reviewed and certified by a qualified Professional

Engineer in accordance with § 270.11(d) of this chapter attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste;

29. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart J, including the provisions of 40 C.F.R. § 265.195(b), which requires, with exceptions not relevant here, that “[t]he owner or operator must inspect at least once each operating day:

(1) [The tank system’s] [o]verfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).”

**Storage of Hazardous Waste without a Permit or Interim Status**

30. At all times relevant to the violations alleged in this CAFO, Respondent has been the owner and operator of a “facility” (i.e., the Facility), where the Respondent engaged in “hazardous waste” management activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
31. At all times relevant to the violations alleged in this CAFO, Respondent was the “generator” of “hazardous waste”, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, having EPA Hazardous Waste Numbers that include D003, D005, D007, D008, K044 and K046, as specified in 40 C.F.R. §§ 261.23, 261.24 and 261.32 and incorporated by reference in 25 Pa. Code § 261a.1.
32. At all times relevant to the violations alleged in this CAFO, Respondent owned and operated a “new tank system” as that term is defined in 40 C.F.R. § 260.10 which is incorporated by reference in 25 Pa. Code § 260a.10, except that the new tank date is January 16, 1993 instead of July 14, 1986. These tanks are made of plastic, have a 1000 gallon capacity, are numbered 6 and 7 and are located in Building 55 at the Facility.
33. At all times relevant to the violations alleged in this CAFO, Respondent engaged in the *storage*, as that term is defined in 25 Pa. Code § 260a.10 of “hazardous waste” in “container[s]” as those terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, at the Facility including, but not limited to:

- a. a D003 hazardous waste exhibiting the characteristic of reactivity;
  - b. a D005 hazardous waste exhibiting the characteristic of toxicity for barium;
  - c. a D007 hazardous waste exhibiting the characteristic of toxicity for chromium;
  - d. a D008 hazardous waste exhibiting the characteristic of toxicity for lead; and
  - e. wastewater treatment sludge containing residues of pyrotechnic and secondary explosives, a K044 listed hazardous waste, and wastewater treatment sludge containing lead, a K046 listed hazardous waste.
34. As set forth below, Respondent was storing hazardous waste in the containers identified below at the Facility without a permit or interim status and without complying with the temporary storage permit exemption provisions set forth in 25 PA Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a) (see Paragraph 24, above):
- a. At least fifteen or more containers of hazardous waste each of which exhibiting one or more of the following hazardous waste codes of D003, D005, D007 and/or D008 stored in Magazine 4 at the Facility with on site storage commencing on various dates between October 15, 2007 and March 11, 2011, with such storage for all containers continuing through at least November 8, 2011;
  - b. At least ten or more containers of hazardous waste, each of which exhibiting the hazardous waste codes of D003 and D008 stored in Magazine 7A at the Facility with on site storage commencing on various dates between October 4, 2001 and October 28, 2009, with such storage for all containers continuing through at least November 8, 2011; and
  - c. At least fifty or more containers of hazardous waste, each of which exhibiting the hazardous waste codes of D003 and D008 stored in Magazine 1AA at the Facility with on site storage commencing on various dates between September 3, 1992 and February 6, 2008, with such storage for all containers continuing through at least November 8, 2011. In addition, another container of hazardous waste exhibiting the hazardous waste code of D003 was stored in Magazine 1AA at the Facility with on site storage commencing on October 9, 2007 and continuing through at least November 8, 2011.
35. On November 8, 2011, Respondent was storing hazardous waste in the containers identified below at the Facility. As set forth below, these containers were not closed (at a time when it was not necessary to add or remove hazardous waste from the container), and therefore failed to comply with the temporary storage permit exemption requirements (including the storage option for satellite accumulation) pursuant to the requirements of 25 PA Code § 262a.10, which incorporate by reference the requirements of 40 C.F.R.

§ 262.34(a)(1)(i) (storage without a permit or interim status) and 40 C.F.R.  
§ 262.34(c)(1)(i) (satellite accumulation), which in turn incorporate 40 C.F.R.  
§ 265.173(a) (see Paragraphs 24, 25 and 27):

- a. Two open, unlabeled containers of hazardous waste with a hazardous waste code of D003 exhibiting the characteristic of reactivity, in the Facility's Building 20 workstation;
  - b. Two buckets containing hazardous waste with a hazardous waste code of D003 exhibiting the characteristic of reactivity, with open lids in the Facility's Spot Charge Room;
  - c. A plastic barrel containing "primary paper waste" which is a hazardous waste with hazardous waste codes of D005 exhibiting the characteristic of toxicity for barium and D008 exhibiting the characteristic of toxicity for lead, with an open lid, and one bucket containing secondary paper waste which is a hazardous waste with a hazardous waste code of D003, without a lid in the Facility's satellite area of Building 20;
  - d. Two buckets, one containing "primary wet waste" which is a hazardous waste with hazardous waste code D008 exhibiting the characteristic of toxicity for lead, and a second barrel containing "primary paper waste" with a hazardous waste code of D008, both with open covers in the Facility's Building 20 Hallway;
  - e. One drum containing "waste saver concentrate", a hazardous waste with a hazardous waste code of D003 exhibiting the characteristic of reactivity, with open bung holes in the Facility's Building 55.
36. Between the dates of February 24, 2011 and April 7, 2011, and May 26, 2011 and July 7, 2011, Respondent was storing hazardous wastes in the containers at Magazines 1AA, 4, and 7A as set forth in Paragraph 35 above, without conducting weekly inspections of such containers (a total of ten weeks without a weekly inspection) and therefore failed to comply with the less than 90-day storage permit exemption requirements of 25 PA Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i) and of 40 C.F.R. Part 265, Subpart I, (see Paragraph 26, above).
37. On November 8, 2011, Respondent was storing primary explosive wastewater that is a hazardous waste due to its being a hazardous waste exhibiting the characteristic of toxicity for lead with a D008 hazardous waste code. The primary explosive wastewater was being stored in the Facility's Tanks 6 and 7, located inside Building 55. Each of these tanks are new tank systems that were installed by Respondent without first having obtained a written assessment of the new hazardous waste tanks system integrity and Respondent therefore failed to comply with the temporary storage permit exemption requirements of 25 PA Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and of 40 C.F.R. Part 265, Subpart J, including the provisions of 40 C.F.R. § 265.192(a) (see also Paragraphs 24 and 28).

38. On thirty-four separate operating days between the dates of May 1, 2010 and June 30, 2010, Respondent failed to conduct daily inspections of Tanks 6 and 7 in the Facility's Building 55 while these tanks were storing primary explosive wastewater that is a hazardous waste due to its being a hazardous waste exhibiting the characteristic of toxicity for lead with a D008 hazardous waste code. Therefore Respondent failed to comply with the temporary storage permit exemption requirements of 25 PA Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(ii) and of 40 C.F.R. Part 265, Subpart J, including the provisions of 40 C.F.R. § 265.195(b) (see also Paragraphs 24 and 29).
39. For each of the reasons and during each of the dates set forth in Paragraphs 30 through 38, above, Respondent failed to comply with the conditions for the temporary storage of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a) and (c), as incorporated by reference in 25 PA Code § 262a.10, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section from September 3, 1992 through November 8, 2011.
40. From at least September 3, 1992 through November 8, 2011, Respondent failed to comply with 25 PA Code § 270a.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 storing hazardous waste at the Facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

#### COUNT I

##### *(Failure to Conduct Waste Determinations)*

41. The allegations of Paragraphs 1 through 40, above, are incorporated herein by reference as though fully set forth at length.
42. 25 PA Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following method:
  - a. The person should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4;
  - b. The person must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261;
  - c. If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:
    - i. testing the waste; or

- ii. applying knowledge of the hazardous characteristic of the waste.
43. At the time of EPA's November 8, 2011 Inspection, Respondent was storing:
- a. at least five metal boxes of fuze assemblies in Magazine 4, one of which having an December 2, 2009 hazardous waste accumulation date on the label;
  - b. eight boxes of fuzes in Magazine 7A dated August 1, 2009;
  - c. eight cardboard boxes of rotor assemblies in Magazine 1AA dated May 2, 1995; and
  - d. several aerosol cans disposed of in the trash.
44. At all times relevant to the violations alleged herein, the wastes referred to in Paragraph 43, above, were a "solid waste" as this term is defined in 25 PA Code § 261a.2 and 40 C.F.R. § 261.2, which is incorporated by reference by 25 PA Code § 261a.1, with exception not relevant hereto.
45. At all times relevant to the violations alleged herein, the wastes referred to in Paragraph 44, above, were a "hazardous waste" as this term is defined in 25 PA Code § 261a.3 and 40 C.F.R. § 261.3, which is incorporated by reference by 25 PA Code § 261a.1, with exception not relevant hereto, as set forth below:
- a. the five metal boxes of fuze assemblies in Magazine 4 are a hazardous waste because they are a hazardous waste exhibiting the characteristic of reactivity with a hazardous waste code of D003;
  - b. the eight boxes of fuzes in Magazine 7A are a hazardous waste because they are a hazardous waste exhibiting the characteristic of reactivity with a hazardous waste code of D003;
  - c. eight cardboard boxes of rotor assemblies in Magazine 1AA are a hazardous waste because they are a hazardous waste exhibiting the characteristic of reactivity with a hazardous waste code of D003;
  - d. the aerosol cans disposed of in the trash are a hazardous waste because they are a hazardous waste exhibiting the characteristic of ignitability with a hazardous waste code of D001.
46. Respondent failed to determine whether the "solid wastes" referred to in Paragraphs 43(a-d) and 45(a-d), above, were a hazardous waste by applying knowledge of the hazardous characteristics of the waste or by testing the waste as provided in 40 C.F.R. § 262.11 which is incorporated by reference by 25 PA Code § 262a.10.

47. From May 2, 1995 through November 8, 2011, Respondent violated 25 PA Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform a hazardous waste determination for each of the solid waste generated and stored at the Facility as referenced in Paragraphs 43(a-d) and 45(a-d), above.

**COUNT II**

***(Failure to Keep Containers of Hazardous Waste Closed During Storage)***

48. The allegations of Paragraphs 1 through 47, above, are incorporated herein by reference as though fully set forth at length.
49. 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
50. On November 8, 2011, Respondent was storing hazardous waste in ten different containers previously identified in Paragraph 35, above, at the Facility which were not kept closed at times when it was not necessary to add or remove waste.
51. On November 8, 2011, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by storing hazardous waste in twenty-one containers that were not kept closed during storage, when it was not necessary to add or remove waste.

**COUNT III**

***(Failure to Conduct Weekly Inspections of Hazardous Waste Storage Container Areas)***

52. The allegations of Paragraphs 1 through 51, above, are incorporated herein by reference as though fully set forth at length.
53. 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174, provides that at least weekly, the owner or operator of a hazardous waste treatment, storage or disposal facility shall inspect areas where hazardous waste containers are stored looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.
54. As set forth above in Paragraph 36, from February 24, 2011 to April 7, 2011, and from May 26, 2011 to July 7, 2011, Respondent failed to inspect, at least weekly, areas at the Facility where hazardous waste containers were being stored looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.
55. Respondent’s failure to inspect, at least weekly, Facility Magazines 1AA, 4, and 7A where hazardous waste containers were being stored looking for leaks and for

deterioration of containers and the containment system caused by corrosion or other factors from February 24, 2011 to April 7, 2011, and from May 26, 2011 to July 7, 2011 (a total of ten weeks without a weekly inspection) was a violation of 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174.

#### **COUNT IV**

##### ***(Failure to Obtain Written Assessment of new Hazardous Waste Tank System Integrity)***

56. The allegations of Paragraphs 1 through 55, above, are incorporated herein by reference as though fully set forth at length.
57. 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. Part 264, Subpart C (including, specifically, 40 C.F.R. § 264.192(a)) requires, in pertinent part, that the owner or operator of a facility that treats and stores hazardous waste in a new tank system must obtain and submit to the PADEP a written assessment reviewed and certified by a qualified Professional Engineer attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.
58. 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. Part 264, Subpart C (including, specifically, 40 C.F.R. § 264.192(g)) requires, in pertinent part, that the owner or operator of a facility that treats and stores hazardous waste in a new tank system must keep on file at the facility the written statements by those persons required to certify the design of the tank system and supervise its installation in accordance with 40 C.F.R. § 264.192(b) through (f), that attest that the tank system was properly designed and installed and that repairs, pursuant to 40 C.F.R. § 264.192(b) through (f), were performed.
59. At the time of EPA's November 17, 2011 Inspection, Respondent had not obtained and submitted to the PADEP a written assessment reviewed and certified by a qualified Professional Engineer attesting that Respondent's new tank system (Tanks 6 and 7) has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste as required by 40 C.F.R. § 264.192(a) as incorporated by reference by 25 PA Code § 264a.1, even though both tanks of the new tank system were storing primary explosive wastewater that is a hazardous waste due to its being both a D003 hazardous waste exhibiting the characteristic of reactivity as well as being a D008 hazardous waste exhibiting the characteristic of toxicity for lead.
60. At the time of EPA's November 17, 2011 Inspection, Respondent failed to obtain and keep on file at the Facility a written assessment reviewed and certified by a qualified Professional Engineer attesting that Respondent's tank system (Tanks 6 and 7) that the tank system was properly installed and that the required repairs were performed as required by 40 C.F.R. § 264.192(g) as incorporated by reference by 25 PA Code § 264a.1.
61. On November 17, 2011, Respondent violated 25 PA Code § 264a.1, which incorporates

by reference the requirements of 40 C.F.R. § 264.192(a) and (g), by failing to have submitted to the Director of the VADEQ a written assessment reviewed and certified by a qualified Professional Engineer attesting that Respondent's new tank system (Tanks 6 and 7) has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste and by failing to have such written assessment at the Facility.

#### **COUNT V**

##### ***(Failure to Conduct Daily Inspections of Hazardous Waste Tanks)***

62. The allegations of Paragraphs 1 through 61, above, are incorporated herein by reference as though fully set forth at length.
63. 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(c), provides that, *inter alia*, the owner or operator of a hazardous waste treatment, storage or disposal facility must perform daily inspections of tanks storing hazardous waste checking for corrosion, erosion or releases of wastes from such tanks.
64. On thirty-four separate operating days between the dates of May 1, 2010 and June 30, 2010, Respondent failed to conduct daily inspections of Tanks 6 and 7 in the Facility's Building 55 as required by 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(c), while such tanks were storing primary explosive wastewater that is a hazardous waste due to its being both a D003 hazardous waste exhibiting the characteristic of reactivity and a D008 hazardous waste exhibiting the characteristic of toxicity for lead.
65. On thirty-four separate operating days between the dates of May 1, 2010 and June 30, 2010, Respondent failed to conduct daily inspections of Tanks 6 and 7 in the Facility's Building 55 which were storing hazardous waste, and, therefore violated 25 PA Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(c).

#### **COUNT VI**

##### ***(Failure to Keep Universal Waste Lamps in a Closed Container)***

66. The allegations of Paragraphs 1 through 65, above, are incorporated herein by reference as though fully set forth at length.
67. Except with exceptions not relevant here, 25 Pa. Code § 266b.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 273, pertaining to the management of "universal waste" set forth in the Universal Waste Management requirements of Chapter 266b of the PaHWR.
68. 40 C.F.R. § 273.1(b), as incorporated by reference in 25 Pa. Code § 266b.1, specifies that Part 273 provides an alternative set of management standards in lieu of regulation under 40 C.F.R. Parts 260 through 272 for universal waste.

69. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “Universal Waste” as including, *inter alia*, “lamps” as described in 40 C.F.R. § 273.5.
70. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “lamp” as “the bulb or bulb portion of an electric lighting device. A lamp is specifically designed to produce radiant energy...Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.”
71. 40 C.F.R. § 273.5, as incorporated by reference in 25 Pa. Code § 266b.1, specifies that lamps are covered under 40 C.F.R. Part 273 except for lamps that are not yet wastes under 40 C.F.R. Part 261, and lamps that are not hazardous waste.
72. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines a “Small Quantity Handler of Universal Waste” as one who does not accumulate 5,000 kilograms or more of universal wastes at any time.
73. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste.
74. 40 C.F.R. § 273.13(d)(1), as incorporated by reference in 25 Pa. Code § 266b.1, with exceptions not relevant here, prohibits a small quantity handler of universal waste from storing universal waste lamps in containers or packages that are not closed.
75. On November 8, 2011, Respondent was storing in the Facility’s Maintenance Pole Barn four boxes of universal waste lamps that were not completely closed while also storing at least 25 separate universal waste lamps that were not in a closed container or package (or any container or package).
76. On November 8, 2011, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by storing in the Facility’s Maintenance Pole Barn four boxes of universal waste lamps that were not completely closed while storing at least twenty-five separate universal waste lamps that were not in a closed container or package (or any container or package).

#### **COUNT VII**

##### ***(Failure to Comply with Universal Waste Labeling/Marking Requirements)***

77. The allegations of Paragraphs 1 through 76, above, are incorporated herein by reference as though fully set forth at length.
78. 40 C.F.R. § 273.14(e) requires that “Each [universal waste] lamp or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

79. On November 8, 2011, Respondent was accumulating in the Facility's Maintenance Pole Barn 20 boxes of universal waste lamps and at least 25 separate universal waste lamps that were not labeled or marked with any one of the applicable and required phrases (i.e., "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)").
80. On November 8, 2011, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e) by failing to properly label or mark 20 boxes of universal waste lamps and at least 25 separate universal waste lamps that it was accumulating at the Facility.

#### **IV. CIVIL PENALTIES**

81. Respondent agrees to pay a civil penalty in the amount of **EIGHTY-FOUR THOUSAND and ONE HUNDRED Dollars (\$84,100.00)**, 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 Allegations of Fact and Conclusions of Law") of this Consent Agreement. 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 a copy of this CAFO is mailed or hand-delivered to Respondent.
82. The civil penalty settlement amount set forth in Paragraph 81, above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), 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). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum").
83. The civil penalty of EIGHTY-FOUR THOUSAND and ONE HUNDRED Dollars (\$84,100.00), set forth in Paragraph 81, above, may be paid in three (3) installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1<sup>st</sup> Payment: The first payment in the amount of Twenty-Eight Thousand and Thirty-Three Dollars and Thirty-Four Cents (\$28,033.34), consisting of a principal payment of \$28,033.34 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. 2<sup>nd</sup> Payment: The second payment in the amount of Twenty-Eight Thousand and One Hundred and Twenty-Six Dollars and Seventy-Seven Cents (\$28,126.77), consisting of a principal payment of \$28,033.33 and an interest payment of \$93.44, shall be paid within Sixty (60) Days of the date on which this CAFO is mailed or hand-delivered to Respondent; and
- c. 3<sup>rd</sup> Payment: The third payment in the amount of Twenty-Eight Thousand and Fifty-Six Dollars and Sixty-Nine Cents (\$28,056.69), consisting of a principal payment of \$28,033.33 and an interest payment of \$23.36, shall be paid within Ninety (90) 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 Eighty-Four Thousand and One Hundred Dollars (\$84,100.00) and total interest payments in the amount of One Hundred and Sixteen Dollars and Eighty Cents (\$116.80).

- 84. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 83, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 88, 89, 90 and 91, below, in the event of any such failure or default.
- 85. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in Paragraph 83, above, Respondent may pay the entire civil penalty of Eighty-Four Thousand and One Hundred Dollars (\$84,100.00) within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in Paragraph 89, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
- 86. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to Paragraph 83, above, and/or the full penalty, pursuant to Paragraphs 83 or 85, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 88, 99, 90 and 91, 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 and address, and the EPA Docket Number of this Consent Agreement, *i.e.*, RCRA-03-2014-0117;
- 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

Customer service contact: 513-487-2091

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

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
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 = 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

US Treasury Contact: 202-874-7026  
Remittance Express (REX) Contact: 866-234-5681

- h. On-Line Payment Option: WWW.PAY.GOV

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>

87. At the time of payment, Respondent shall send a notice of such payment, including Respondent's name, address, and EPA Docket Number (RCRA-03-2014-0117), along with 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

James Heenehan  
Sr. Assistant Regional Counsel (3RC30)

U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

88. 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.
89. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will 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 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).
90. 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.
91. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
92. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

#### **V. CERTIFICATIONS**

93. 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 current, authorized revised PaHWR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this Consent Agreement.

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

94. 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**

95. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this Consent Agreement. 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**

96. 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 Consent Agreement.

## **IX. PARTIES BOUND**

97. This Consent Agreement and the accompanying Final Order 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 Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

## **X. EFFECTIVE DATE**

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

## **XI. ENTIRE AGREEMENT**

99. 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:

Action Manufacturing Company:

Date: 9/22/14

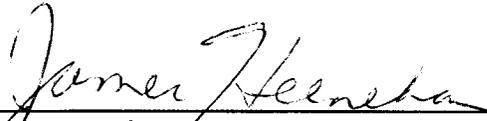
By: 

Name: Sean Gibbs  
Title: President and CEO

For the Complainant:

U.S. Environmental Protection Agency, Region III

Date: 9/24/14

By: 

James Heenehan  
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 Final Order.

Date: 9.25.14

By: 

John A. Armstead, Director  
Land and Chemicals Division

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

REGIONAL HEARING CLERK  
 EPA REGION III, PHILA, PA

2014 SEP 29 PM 4:45

RECEIVED

<p><b>In the matter of:</b></p>	)	
	)	
<p><b>Action Manufacturing Company                  100 East Erie Ave.                  Philadelphia, PA 19134</b></p>	)	<p><b>Docket No. RCRA-03-2014-0114</b></p>
	)	
<p><b>RESPONDENT.</b></p>	)	<p><b>Proceeding Under Section                  3008(a) and (g) of the                  Resource Conservation and                  Recovery Act, as amended,                  42 U.S.C. § 6928(a) and (g)</b></p>
	)	
<p><b>Action Manufacturing Company                  500 Bailey Crossroads                  Atglen, PA 19310</b></p>	)	
	)	
<p><b>FACILITY.</b></p>	)	

**FINAL ORDER**

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Action Manufacturing Company, 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty pay a civil penalty of EIGHTY-FOUR THOUSAND and ONE HUNDRED Dollars (\$84,100.00) in accordance with the terms and conditions of the Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the

*In the Matter of: Action Manufacturing Company, Docket No. RCRA-03-2014-0117*

date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

9-29-14  
Date:

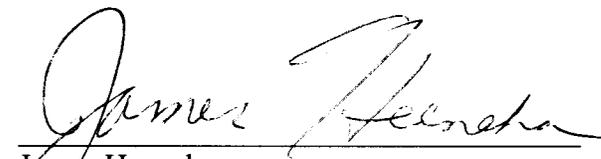
Heather Gray  
Heather Gray  
Regional Judicial Officer  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I hand-delivered the original and one true and correct copy of the Consent Agreement and Final Order for *In the Matter of: Action Manufacturing Company* (Docket No. RCRA-03-2014-0117), to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch St., Philadelphia, PA, 19103, and that I sent a true and correct copy of same to Respondent, Action Manufacturing Company, in care of its below-listed attorney via UPS overnight mail:

For Respondent: Harry Weiss, Esq.  
Ballard Spahr LLP  
1735 Market Street  
51<sup>st</sup> Floor  
Philadelphia, PA 19103-7599

9/29/14  
Date

  
James Heenehan  
Sr. Assistant Regional Counsel (3RC30)  
U.S. EPA Region III

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