UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of:	)	**EPA Docket No. RCRA-01-2018-0062**
	)	
	)	
ISP Freetown Fine Chemicals Inc.	)	
238 South Main Street	)	
Assonet, MA	)	
	)	
	)	
Respondent	)	
	)	
Proceeding under Section 3008(a) of the	)	
Resource Conservation Recovery Act	)	
42 U.S.C. § 6928(a)	)	
	)	

PARTIAL CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint herein on September 26, 2018, and an Amended Complaint on June 7, 2019 (hereinafter the Amended Complaint is referred to as the "Complaint"), against Respondent ISP Freetown Fine Chemicals Inc. ("Respondent") under the Resource Conservation and Recovery Act ("RCRA"); and

Complainant and Respondent having agreed that partial settlement of this matter is in the public interest, and that entry of this Partial Consent Agreement and Final Order ("Partial CAFO") without further litigation is the most appropriate means of resolving certain claims filed in this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding to obtain compliance with RCRA and for the assessment of a civil penalty pursuant to Sections 3008(a) and (g) of RCRA.

2. The Complaint alleges that Respondent violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and federal and state hazardous waste regulations promulgated pursuant to RCRA.

3. This Partial CAFO shall apply to and be binding upon Respondent, and its successors and assigns.

4. For the purpose of this Partial CAFO, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint with respect to the claims that are settled herein only. Respondent waives any defenses it might have as to jurisdiction and venue with respect to the claims that are settled herein only. Without admitting or denying the factual allegations and legal conclusions contained in the Complaint, and without admitting or denying liability as to any claim alleged in the Complaint, Respondent consents for purposes of settlement of certain EPA claims to the terms of this Partial CAFO.

5. With respect to the claims settled herein, Respondent hereby waives its right to a judicial or administrative hearing or appeal on those issues of law or fact set forth in the Complaint with respect to these claims, and waives its right to appeal the Final Order accompanying this Partial Consent Agreement.

II. SETTLED MATTERS

6. Many of the claims in the Complaint concern the following tanks and equipment located at Respondent's facility:

a. Tanks: Tanks S-502A, S-503A, S-526 and S-545 (jointly, the "Receiver Tanks"), and Tank S-535 ("Facility-Wide Hazardous Waste Tank").

b. Equipment: Transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds used to transfer material from condensers to the Receiver Tanks (the "Upstream Equipment"), from the Receiver Tanks to the Facility-Wide Hazardous Waste Tank (the "Mid-Stream Equipment") and from the Facility-Wide Hazardous Waste Tank to transportation vehicles for off-site shipment (the "Downstream Equipment").

7. This Partial CAFO fully settles four of the claims in the Complaint, and also settles those portions of four other claims in the Complaint that concern the Facility-Wide Hazardous Waste Tank, the Mid-Stream Equipment and/or the Downstream Equipment, and the tanks and equipment described in Paragraph 11 below. With respect to EPA's claims that are not subject to this Partial CAFO, EPA and Respondent reserve all rights to pursue or defend such claims.

8. Specifically, this Partial CAFO completely resolves the following counts alleged in the Complaint:

Count 5: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Open-Ended Valves and Lines;

Count 7: Failure to Comply with Subpart BB and CC Air Monitoring Methods; and

Count 8: Failure to Have an Adequate Training Program.

Count 9: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records.

9. In addition, this Partial CAFO partially resolves the following counts alleged in the Complaint:

Count 2: Failure to Comply with Hazardous Waste Tank Air Emission Standards (Subpart CC) (resolving only that portion of Count 2 concerning the Facility-Wide Hazardous Waste Tank and the relevant tanks and equipment described in Paragraph 11 below);

Count 3: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment (resolving only that portion of Count 3 concerning

the Mid-Stream Equipment and the Downstream Equipment and the relevant equipment described in Paragraph 11 below);

Count 4: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service, Gas/Vapor Service, Pumps and Flanges (resolving only that portion of Count 4 concerning the Mid-Stream Equipment and the Downstream Equipment and the relevant equipment described in Paragraph 11 below); and

Count 6: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records (resolving only that portion of Count 6 concerning the Mid-Stream Equipment and the Downstream Equipment and the relevant equipment described in Paragraph 11 below).

10. This Partial CAFO does not resolve Count 1 alleged in the Complaint: Failure to Comply with Standards for the Storage of Hazardous Waste in Tanks, nor does it resolve the portion of Counts 2, 3, 4 and 6 that concerns the Receiver Tanks and/or the Upstream Equipment.

11. Based on EPA's inspection of Respondent's facility, additional documents provided to EPA by Respondent and Respondent's representations to EPA of the operations at its Facility as of the effective date of this Partial CAFO, EPA agrees (a) that Tank 716-A and its associated equipment are not subject to RCRA requirements because they are operating as a wastewater treatment unit, (b) that the equipment in the Pilot Plant is not subject to the requirements of Subpart BB of RCRA because hazardous waste exiting the Pilot Plant is managed by Respondent in satellite accumulation vessels, (c) that the tanks and equipment that are part of or associated with the Cryogenic Condensation Vapor Recovery Units (VRUs) are not subject to Subparts BB or CC of RCRA because the materials from the VRUs are not subject to hazardous waste regulation until they exit the tanks in which they are required by state law or permit to be weighed and sampled for analysis (*i.e.*, Tanks S-1411, S-1412, S-1431, S-1432, S-1440, and S-

1441), and (d) that Tanks S-505 and S-507 are not subject to federal RCRA requirements because they do not handle hazardous wastes.

12. By this Partial CAFO, Respondent hereby agrees to withdraw Respondent's Motion to Dismiss Counts Two Through Eight for Failure to State a Claim, filed on June 25, 2019, and agrees to strike (or request approval to strike) its Third and Sixteenth Defenses from Respondent's Answer, which was also filed on June 25, 2019.

III. TERMS OF SETTLEMENT

13. Respondent shall complete the compliance measures set forth in subparagraphs a. through e., at its facility located in Assonet, Massachusetts:

a. Within 30 days of the effective date of this Partial CAFO, Respondent shall mark each piece of Mid-Stream Equipment and Downstream Equipment subject to the requirements of Subpart BB of 40 C.F.R. Part 265 ("Subpart BB") in such a manner that it can be distinguished readily from other pieces of equipment in accordance with the requirements of 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.17(a)(2).

b. Within 30 days of the effective date of this Partial CAFO, Respondent shall comply with hazardous waste air emission standards (Subpart BB) for Mid-Stream Equipment and Downstream Equipment consisting of valves in light liquid service or gas/vapor service, pumps in light liquid service, and flanges, in accordance with the requirements of 40 C.F.R. § 265.1052(a)(1) and (a)(2), 40 C.F.R. § 265.1057(a), 40 C.F.R. § 265.1058(a), and 40 C.F.R. § 265.1061, as referenced by 40 C.F.R. § 262.17(a)(2).

c. Within 30 days of the effective date of this Partial CAFO, Respondent shall comply with Subpart BB's recordkeeping requirements for Mid-Stream Equipment and Downstream Equipment, in accordance with 40 C.F.R. § 265.1064(a), (b), and (g), as

referenced by 40 C.F.R. § 262.17(a)(2).

d. Within 15 days of the effective date of this Partial CAFO, Respondent shall comply with Method 21 by using the proper calibration gases and maintaining adequate records of calibration in conducting its RCRA air emission tests in accordance with the requirements of 40 C.F.R. § 262.17(a)(2), which references 40 C.F.R. § 265.1063(a) and (b), and 40 C.F.R. § 265.1084(d), which reference 40 C.F.R. Part 60, Appendix A. Respondent may, at its own option, use a calibration gas consisting of a mixture of methane or n-hexane and air at a concentration significantly less than 10,000 ppm methane or n-hexane, provided that it documents that it is using that lower concentration as the threshold for determining whether a leak has been detected.

e. Within 30 days of the effective date of this Partial CAFO, Respondent shall ensure that all site personnel assigned to manage hazardous wastes have completed a training program that teaches them to perform their duties in a way that ensures the Facility's compliance with RCRA, in accordance with 40 C.F.R. § 262.17(a)(7), and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 30.341(1)(a), including training on compliance with Subparts BB and CC.

14. Within 60 days of the effective date of this Partial CAFO, Respondent shall submit to EPA a written report documenting its compliance (accompanied by a copy of any appropriate supporting document, including identification of equipment subject to this Partial CAFO) with the requirements set forth in Paragraph 13.a. – 13.e. above.

15. EPA may grant a written extension of any deadline set forth in Paragraph 13 or 14 of this Partial CAFO, for good cause shown.

16. Pursuant to Section 3008 of RCRA, EPA has determined that an appropriate civil penalty to settle the matters addressed by this Partial CAFO is in the amount of forty thousand dollars ($40,000).

17. Respondent consents to the issuance of this Partial CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

18. a. Respondent shall pay the amount of $ 40,000 cited in Paragraph 16 within thirty (30) days of the effective date of this Partial CAFO. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of ISP Freetown Fine Chemicals Inc.*, Partial Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (RCRA-01-2018-0062), and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:
U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

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

b. At the time of the payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-6
Boston, MA 02109-3912

and

Audrey Zucker
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-2
Boston, MA 02109-3912

c. Respondent shall pay interest on a late payment pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

19. Nothing in this Partial CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

20. Respondent shall submit all notices and reports required by this Partial Consent Agreement and Final Order by first class mail, overnight delivery, or by electronic mail in PDF format to:

Audrey Zucker
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORC 4-2)
Boston, Massachusetts 02109
Zucker.audrey@epa.gov

and to:

Richard Piligian
Environmental Engineer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ECAD 5-4)
Boston, Massachusetts 02109
Piligian.richard@epa.gov

21. The payment due under Paragraph 16, and any interest, non-payment penalties or charges that arise pursuant to this Partial CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this Partial CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

22. This Partial CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

23. This Partial CAFO constitutes a settlement by EPA only of those claims for liability and civil penalties pursuant to RCRA for the specific violations alleged in the Complaint described in Paragraphs 8 and 9, above. Nothing in this Partial CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, to which Respondent reserves all rights, privileges, and defenses. Nothing in the Partial CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response

to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, to which Respondent reserves all rights, privileges, and defenses.

24. If Respondent fails to pay the amount due under Paragraph 16, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the amount due under Paragraph 16 (or any portion thereof) on the date it is due under this Partial CAFO if such amount (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

25. Each undersigned representative of the parties to this Partial CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Partial CAFO and to execute and legally bind that party to it. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed Partial CAFO, by electronic mail, to the following addresses: AGoldberg@bdlaw.com and relampkin@ashland.com. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19,

2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

26. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Partial CAFO. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For Complainant:

KAREN MCGUIRE Digitally signed by KAREN MCGUIRE Date: 2020.10.06 16:27:09 -04'00'

Date:_____

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1

For Respondent:

Date: 10-2-2020

Usama Hashim
Personal Care & House Hold Manufacturing Director
ISP Freetown Fine Chemicals Inc.

FINAL ORDER

Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes EPA to compromise with or without conditions the maximum civil penalties which may be imposed under that Section. EPA has made such a compromise by applying the penalty factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to the facts and circumstances of those claims resolved herein, including the seriousness of the violations and any good faith efforts to comply with the applicable requirements.

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Partial Consent Agreement resolving certain claims in this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, ISP Freetown Fine Chemicals Inc., is ordered to comply with the terms of the above Partial Consent Agreement which will become effective on the date it is filed with the Regional Hearing Clerk.

LEANN JENSEN Digitally signed by LEANN JENSEN
Date: 2020.10.14 17:29:14 -04'00'

LeAnn Jensen
Regional Judicial Of f icer
U.S. Environmental Protection Agency, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of: ISP Freetown Fine Chemicals, Inc. MAR000009605 Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, U.S.C. § 6928(a)	Docket No. RCRA-01-2018-0062

JOINT PROPOSED PLAN

In its Order of August 7, 2020, this Tribunal instructed the Parties to file a "Joint Proposed Plan" by October 16, 2020, in which the Parties "shall clarify whether Respondent's Motion to Dismiss and Complainant's Motion to Strike have been rendered moot." *Id.*, at 2. Moreover, "if either Motion is not moot, the parties shall describe in the Joint Proposed Plan which issues still require a ruling from this Tribunal." *Id.*

Along with this Joint Proposed Plan, the parties have filed a copy of a Partial Consent Agreement and Final Order ("Partial CAFO"), effective October 16, 2020. As provided in Paragraph 12 of the Partial CAFO, Respondent hereby withdraws its Motion to Dismiss and Complainant withdraws its Motion to Strike. Consistent with the Partial CAFO, this Joint Proposed Plan confirms that there are now no pending opposed motions in this case requiring a ruling from this Tribunal.

With respect to the issues resolved in the Partial CAFO and the remaining issues before this Tribunal, the Partial CAFO completely resolves the following four counts in the Complaint:

Count 5: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Open-Ended Valves and Lines;

Count 7: Failure to Comply with Subpart BB and CC Air Monitoring Methods;

Count 8: Failure to Have an Adequate Training Program; and

Count 9: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records.

The Partial CAFO partially resolves the following four counts in the Complaint:

Count 2: Failure to Comply with Hazardous Waste Tank Air Emission Standards (Subpart CC) (resolving only that portion of Count 2 concerning a portion of the tanks at issue);

Count 3: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment (resolving only that portion of Count 3 concerning a portion of the equipment);

Count 4: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service, Gas/Vapor Service, Pumps and Flanges (resolving only that portion of Count 4 concerning a portion of the equipment); and

Count 6: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records (resolving only that portion of Count 6 concerning a portion of the equipment).

In addition, under the Partial CAFO, EPA settles specific allegations with respect to certain tanks and equipment based on information presented by Respondent after the Complaint was filed. *See* Paragraph 11 of the Partial CAFO.

The Partial CAFO does not resolve Count 1 as alleged in the Complaint: Failure to Comply with Standards for the Storage of Hazardous Waste in Tanks, nor does it resolve portions of Counts 2, 3, 4 and 6. The central issue remaining in dispute is whether the tanks and equipment cited in the unresolved claims are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939c, and federal and state hazardous waste regulations promulgated pursuant to RCRA.

At this time, the Parties are engaged in discussions and negotiations attempting to narrow their disputes of fact with respect to the remaining claims that are not resolved by the Partial CAFO. Respondent has prepared a lengthy draft stipulation of facts which Complainant is presently evaluating. Accordingly, the Parties respectfully request that they be ordered to report back to this Tribunal in one month to report on their progress in narrowing the disputed facts at issue.

DATED: October 16, 2020

Respectfully submitted,

Audrey Zucker
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Counsel for Respondent
ISP Freetown Fine Chemicals, Inc.

Docket No. RCRA-01-2018-0062

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Proposed Plan and Partial Consent Agreement and Final Order was served on the 16th day of October 2020 in the following manner on the addressees listed below:

Copy by e-mail to:

Attorney for Respondent
Eric L. Klein
BEVERIDGE & DIAMOND, P.C.
155 Federal Street, Suite 1600
Boston, MA 02110
eklein@bdlaw.com

By OALJ E-Filing System:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, DC 20460

By OALJ E-Filing System:

Christine Coughlin, Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, DC 20460

October 19, 2020

Audrey Zucker
Region 1
U.S. Environmental Protection Agency
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Zucker.audrey@epa.gov
Attorney for Complainant