

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

<b>In the Matter of:</b>	:	
	:	
<b>FedChem, L.L.C.</b>	:	<b>U.S. EPA Docket No. RCRA-03-2021-0043</b>
<b>275 Keystone Drive</b>	:	
<b>Bethlehem, Pennsylvania 18020</b>	:	
	:	
<b>Respondent.</b>	:	<b>Proceeding under Section 3008(a) and</b>
	:	<b>(g) of the Resource Conservation and</b>
	:	<b>Recovery Act, as amended, 42 U.S.C.</b>
<b>FedChem, L.L.C.</b>	:	<b>Section 6928(a) and (g)</b>
<b>275 Keystone Drive</b>	:	
<b>Bethlehem, Pennsylvania 18020</b>	:	
	:	
<b>Facility.</b>	:	

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Fedchem, L.L.C., (“Respondent”) (collectively the “Parties”), pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. RCRA Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant’s civil penalty claims against Respondent under RCRA (or the “Act”) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated, March 27, 2020, EPA notified the Pennsylvania Department of the Environment (“PaDEP”) of EPA’s intent to commence this administrative action against Respondent in response to the alleged violations of RCRA Subtitle C and the PaHWMR that are set forth herein.

### **GENERAL PROVISIONS**

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CONSENT AGREEMENT and waives its right to appeal the accompanying FINAL ORDER. Except as expressly provided herein, including but not limited to Paragraph 8 regarding admission to jurisdictional allegations, this waiver is not intended to nor should it be interpreted to be an admission of fact, law, or waiver of defense in any other proceeding with other parties including any other proceeding involving Complainant. Nothing in this Consent Agreement shall be construed as an admission of liability on the part of Respondent nor shall this Consent Agreement be used as evidence in any other proceeding, except any proceeding to enforce this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. EPA and Respondent shall bear their own costs and attorney’s fees in connection with this proceeding.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§22.13(b) and 22.18(b)(2) and (3), Complainant alleges and adopts the following findings of fact and conclusions of law:
13. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) (“PaHWMR”) in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939 (g). Effective January 30, 1986, the PaHWMR was 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 and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed.Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009).
14. Factual allegations or legal conclusions in this Consent Agreement that are based on provisions of federally authorized PaHWMR requirements cite those respective provisions as the authority for such allegations or conclusions.
15. When EPA last authorized the Pennsylvania hazardous waste regulations on June 29, 2009, EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein are to the 2005 Federal regulations.
16. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment if a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
17. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, and certain provisions of the PaHWMR at its facility.
18. Respondent is and was at the time of the violations alleged herein, a corporation of the State of Ohio.

19. Respondent is and was at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 25 Pa. Code § 260a.10.
20. Respondent is, and at all times relevant to this Consent Agreement, was the “owner” and “operator” of a “facility”, described in Paragraph 21 below, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
21. The facility referred to in Paragraph 20, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a manufacturing facility located at 275 Keystone Drive, Bethlehem, Pennsylvania, 18020.
22. Respondent was at all times relevant to this Consent Agreement and Final Order, a “generator” of, and has engaged in the “storage” in “containers” and “tanks” at the Facility of materials described below that are “solid wastes” and “hazardous wastes”, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, with the exception of the term “storage”, which is defined in 25 Pa. Code § 260a.10.
23. Respondent was at all times relevant to this Consent Agreement and Final Order, a large quantity generator of hazardous waste that generated more than 1,000 kilograms of hazardous waste per month at its Facility. Respondent is assigned EPA ID No. PAD053061578.
24. On May 29, 2019, a representative of EPA conducted a RCRA Compliance Evaluation Inspection (“CEI”) at the Facility.
25. On May 21, 2020, EPA sent to Respondent an Opportunity to Show Cause letter, advising Respondent of certain alleged violations of RCRA Subtitle C based upon the RCRA CEI. By letter dated October 29, 2020, Respondent responded to EPA’s Opportunity to Show Cause letter.
26. On May 29, 2019, “hazardous wastes” generated by Respondent, identified below in Paragraph 27, below, were in “storage” in containers and tanks at the Facility.
27. Respondent generates waste flammable liquid at the Facility which is comprised of, among other things, waste xylene, acetone and isopropyl alcohol which are hazardous wastes (EPA Hazardous Waste Nos. D001, D002, D018, and F003) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. §§ 261.21 because it exhibits the characteristic of ignitability.

#### **COUNT I**

#### **(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)**

28. The preceding paragraphs are incorporated by reference.

29. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
30. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34, which provides, in pertinent part, that a generator that accumulates hazardous waste on site for less than 90 days in compliance with the terms of that section may do so without a permit or interim status.
31. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(2) which provides, in pertinent part, that a generator may accumulate hazardous waste in containers on-site for 90 days or less without a permit or having interim status provided that, among other things, each container, while being accumulated on site, is properly labeled with the date upon which each period of accumulation began.
32. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(3) which provides, in pertinent part, that a generator may accumulate hazardous waste in containers on-site for 90 days or less without a permit or having interim status provided that, among other things, each tank, while being accumulated on site, is properly labeled with the words “Hazardous Waste.”
33. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii) which 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. 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 and without complying with paragraph (a) of 40 C.F.R. § 262.34 provided he, *inter alia*, marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
34. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii) and by further reference to 40 C.F.R. § 265.193(e)(1)(iii), which provides, in pertinent part, that a generator may accumulate hazardous waste in tanks for 90 days or less provided that the external liner of the secondary containment around the hazardous waste storage tanks, which if it is an external liner the liner must be free of cracks and gaps.
35. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii) and by further reference 40 C.F.R. § 265.191 with the exception that 25 Pa. Code § 265a.191 applies to all hazardous waste storage tanks, provides that a generator may accumulate hazardous waste in tanks for 90 days or less provided, *inter alia*, that the generator obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system’s integrity by January 17, 1994 (25 Pa. Code § 265a.191).
36. Pursuant to 25 Pa. Code § 262a.10 which incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 262.34(a)(1)(ii), which

references 40 C.F.R. § 265.195(a), a generator may accumulate hazardous waste in tanks for 90 days or less provided that the generator must inspect at least once each operating day:

- (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;
- (2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;
- (3) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and
- (4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation)

37. 25 Pa. Code § 262a.10 which incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.195(c), provides a generator may accumulate hazardous waste in tanks for 90 days or less provided that in accordance with 40 C.F.R. § 265.195(c), the generator documents in the operating record of the facility an inspection of those items in 40 C.F.R. 265.195(a) and (b).
38. 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.1063(d), provides a generator may accumulate hazardous waste in tanks for 90 days or less provided, *inter alia*, that in accordance with the waste analysis plan required by 40 C.F.R. § 265.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight.
39. 25 Pa. Code § 262a.10, which incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.1064(g)(6), a generator may accumulate hazardous waste in tanks for 90 days or less provided, *inter alia*, identifies, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
40. On May 29, 2020, Respondent stored hazardous waste in seven, 5-gallon “Zicros Waste Lab Packs” located in the Warehouse hazardous waste accumulation area at the Facility that were not marked with the start accumulation date in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(2).
41. On May 29, 2019, Respondent stored hazardous waste in three 1,500-gallon hazardous waste storage tanks at the Facility that were not marked with the words “Hazardous Waste” in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(3).
42. On May 29, 2019 Respondent stored hazardous waste in seven, 5-gallon “Zicros Waste Lab Packs” located in the hazardous waste accumulation area at the Facility that were not labeled

with the words "Hazardous Waste" in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(3).

43. On May 29, 2019 Respondent accumulated hazardous waste in satellite containers that were not marked with the words "Hazardous Waste" or with other words that identified the contents of the containers in violation as follows:
  - a. Five, 5-gallon buckets used to collect mixed acrylates hazardous waste in the Production Building at the Facility;
  - b. One, 1-liter container collecting mixed acrylates hazardous waste in the Main QC Lab at the Facility; and,
  - c. Two, 5-gallon containers collecting small containers in the Production Development and Instrument Labs at the Facility.
44. On May 29, 2019, Respondent stored hazardous waste in three, 1,500-gallon hazardous waste tanks at the Facility with an external liner system as secondary containment that had numerous cracks, in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii) and by further reference 40 C.F.R. § 265.193(e)(1)(iii).
45. On May 29, 2019 Respondent had not obtained and kept on file at its Facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity by January 17, 1994 (25 Pa. Code § 265a.191).
46. On May 29, 2019, Respondent stored hazardous waste in three, 1,500-gallon hazardous waste tanks at the Facility and failed to conduct daily inspections of these hazardous waste tanks six times in 2019 and two times in 2018 in violation of 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii) with further reference to 40 C.F.R. § 265.195(a).
47. On May 29, 2019, Respondent stored hazardous waste without determining, in accordance with the waste analysis plan required by 40 C.F.R. § 265.13(b), for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.1063(d). Specifically, the determination required by 40 C.F.R. § 265.13(b) was not made for at least the following equipment:
  - a. One pump and four valves associated with the Reactor 130 distillation unit;
  - b. Equipment associated with reactor vessels transferring hazardous waste after solvents are used to clean or flush the vessels; and,
  - c. At least two valves transferring hazardous waste into the three, 1,500-gallon hazardous waste tanks.

48. On May 29, 2019, Respondent did not identify, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(ii), which references 40 C.F.R. § 265.1064(g)(6).
49. For the reasons and during the times set forth above at the Facility, Respondent failed to comply with the conditions for the temporary storage (*i.e.*, 90 days or less) of hazardous waste by a generator that are required pursuant to 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
50. Respondent's Facility is a hazardous waste treatment, storage or disposal "facility" as that term is defined in 25 Pa. Code § 260a.10 with respect to the storage of hazardous waste as described above.
51. Respondent does not have, and never had, a hazardous waste treatment or storage permit or interim status pursuant to 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), for the treatment or storage of hazardous waste at the Facility.
52. Respondent was required by 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), to obtain a permit for the hazardous waste storage activities described in this count.
53. From at least May 30, 2014, until May 29, 2019, Respondent violated 25 Pa. Code § 270a.1, 40 C.F.R. § 270.1(b) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.
54. In failing 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), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT II**  
**(Hazardous Waste Determination)**

55. The preceding paragraphs are incorporated by reference.
56. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, 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 methods:

(a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.



(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.

(c) For purposes of compliance with 40 C.F.R. Part 268, or 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:

(1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

57. From at least May 29, 2017 until May 29, 2019, Respondent stored the following containers at the Facility without first making a hazardous waste determination, in violation of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11:
- a. Fifteen 55-gallon containers located in the Facility Warehouse hazardous waste accumulation area at the Facility;
  - b. Five 7-gallon containers located in the Warehouse hazardous waste accumulation at the Facility.
58. The wastes referred to in Paragraph 57 above, are and were at the time of the alleged violations “solid wastes” as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2, with exceptions not relevant here.
59. In failing to comply with 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

### **COUNT III**

#### **(Failure to Provide Written Assessments for Hazardous Waste Tanks)**

60. The preceding paragraphs are incorporated by reference.
61. 25 Pa. Code § 264a.191 which incorporates by reference 40 C.F.R. § 264.191 with the exception that 25 Pa. Code § 265a.191 applies to all hazardous waste storage tanks, provides that for all hazardous waste tanks, the owner or operator obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system’s integrity by January 17, 1994.
62. From at least May 30, 2014, to May 29, 2019, Respondent stored hazardous waste in three 1,500-gallon hazardous waste existing tanks at the Facility without obtaining a written assessment by a professional engineer.

63. From at least May 30, 2014, through May 29, 2019, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.191(a), by failing to obtain and provide a written assessment by a professional engineer for tanks used at the Facility for storing hazardous waste.
64. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.191(a), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT IV**  
**(Secondary Containment)**

65. The preceding paragraphs are incorporated by reference.
66. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193 with exceptions not relevant herein, requires that an owner or operator of all new and existing tank systems used to store hazardous waste have secondary containment that meets certain requirements, including in the case of an external liner that the liner be free of cracks and gaps.
67. On May 29, 2019, the secondary containment for three, 1,500-gallon hazardous waste tanks at the Facility had an external liner with numerous cracks in violation of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193.
68. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.191(a), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT V**  
**(Daily Tank Inspections)**

69. The preceding paragraphs are incorporated by reference.
70. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(b), requires the owner and operator of hazardous waste storage tanks to inspect, where present, at least once each operating day:
- (1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;
  - (2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; 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).

71. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(d), requires that the generator document in the operating record of the facility an inspection of those items in 40 C.F.R. 264.195(a) and (b).
72. Respondent did not conduct and document daily inspections of three 1,500-gallon hazardous waste storage tanks at the Facility on six days in calendar year 2019 and on two days in calendar year 2018, in violation of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195.
73. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1951(a), (b) and (g), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **COUNT VI**

##### **(Failure to Determine Whether Equipment Contains or Contacts a Hazardous Waste with 10% or More Organic Concentration)**

74. The preceding paragraphs are incorporated by reference.
75. 25 Pa. Code § 264a.1 incorporates by reference the Air Emission Standards for Equipment Leaks in 40 C.F.R. Part 264 Subpart BB, which includes 40 C.F.R. § 264.1063(d). 40 C.F.R. § 264.1063(d) requires that in concert with the waste analysis plan required by 40 C.F.R. § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using one of the methods set forth at 40 C.F.R. § 264.1063(d)(1) – (3).
76. On May 29, 2019, Respondent had failed to determine whether the following equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using one of the methods set forth at 40 C.F.R. § 264.1063(d)(1) – (3), in violation of 40 C.F.R. § 264.1063(d).
  - a. One pump and four valves associated with the Reactor 130 distillation unit;
  - b. Equipment associated with reactor vessels transferring hazardous waste after solvents are used to clean or flush the vessels; and,
  - c. At least two valves transferring hazardous waste into the three, 1,500-gallon hazardous waste tanks.
77. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1063(d), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **COUNT VII**

**(Failure to Record 300 Hour Exemption in the Facility Operating Record)**

78. The preceding paragraphs are incorporated by reference.
79. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1064(g)(6), requires identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year in a log kept in the facility operating record.
80. On May 29, 2019, Respondent had not recorded in a log kept with the Facility operating record the identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
81. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1064(g)(6), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT VIII  
(Failure to Timely Submit Biennial Report)**

82. The preceding paragraphs are incorporated by reference.
83. 25 Pa. Code § 262a.41, requires every generator who ships any hazardous waste offsite to a treatment, storage or disposal facility within the United States to prepare and submit a single copy of a biennial report to the Director of PADEP by March 1 of each even numbered year.
84. For the 2017 reporting year, Respondent submitted its biennial report on March 29, 2018, 28 days after the reporting deadline of March 1, 2018.
85. In failing to comply with 25 Pa. Code § 262a.41, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT IX  
(Failure to Mark Universal Waste)**

86. The preceding paragraphs are incorporated by reference.
87. Respondent is a small quantity handler of universal waste as that term is defined at 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14, requires a small quantity handler of universal waste to label or mark the universal waste to identify the type of universal waste as specified in 40 C.F.R. § 273.14. Specifically, 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires containers of universal waste lamps to be labeled with one of the following phrases: “Universal Waste -Lamp(s),” or “Waste Lamp(s)” or “Used Lamp(s).”

88. On May 29, 2019, Respondent had not labeled a four-foot long container of universal waste lamps with one of the following phrases: “Universal Waste -Lamp(s),” or “Waste Lamp(s)” or “Used Lamp(s)” in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14.
89. In failing to comply with 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14. and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**COUNT X**  
**(Failure to Track Accumulation Time of Universal Waste Lamps)**

90. The preceding paragraphs are incorporated by reference.
91. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c) requires that a small quantity handler of universal waste who accumulates universal waste be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
- (1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - (2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
  - (3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
  - (4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - (5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
  - (6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
92. On May 29, 2019, Respondent could not demonstrate the length of time that one four-foot long container of universal waste lamps had been accumulated from the date it became a waste.
93. In failing to comply with 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**CIVIL PENALTIES**

94. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-FOUR DOLLARS (\$57,834.00) in

settlement of the alleged violations set forth in this Consent Agreement which Respondent agrees to pay in accordance with the terms set forth below.

95. The civil penalty was based upon EPA's consideration of a number of factors, including the penalty criteria 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 reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

96. Payment of the civil penalty and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2021-0043;
- 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  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[Howell.joyce@epa.gov](mailto:Howell.joyce@epa.gov)

97. 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 as specified in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
98. Payment of the civil penalty amount is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
99. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
100. ADMINISTRATIVE COSTS: The costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
101. LATE PAYMENT PENALTY: A late payment penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
102. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

#### **GENERAL SETTLEMENT CONDITIONS**

103. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

104. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

#### **CERTIFICATION OF COMPLIANCE**

105. Respondent certifies to EPA that, upon personal investigation and to the best of Respondent's knowledge and belief, Respondent is currently in compliance with regard to the violations alleged in the Consent Agreement.

#### **OTHER APPLICABLE LAWS**

106. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the RCRA, or any regulations promulgated thereunder.

#### **PARTIES BOUND**

107. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. 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 legally bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

#### **EFFECTIVE DATE**

108. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

#### **ENTIRE AGREEMENT**

109. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or



conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: FedChem, L.L.C.

Date: 02/25/2021

By: Christopher Horvath  
Christopher Horvath  
President  
Fedchem, L.L.C.

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Melvin, Director  
Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joyce A. Howell  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III

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

<b>In the Matter of:</b>	:
	:
<b>FedChem, L.L.C. 275 Keystone Drive Bethlehem, Pennsylvania 18020</b>	: <b>U.S. EPA Docket No. RCRA-03-2021-0043</b>
	:
<b>Respondent.</b>	: <b>Proceeding under Section 3008(a) and</b>
	: <b>(g) of the Resource Conservation and</b>
	: <b>Recovery Act, as amended, 42 U.S.C.</b>
<b>FedChem, L.L.C. 275 Keystone Drive Bethlehem, Pennsylvania 18020</b>	: <b>Section 6928(a) and (g)</b>
	:
<b>Facility.</b>	:

**FINAL ORDER**

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

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”), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-FOUR DOLLARS (\$57,834.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions as specified in the attached Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

\_\_\_\_\_  
Date:

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