UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Fareva – Richmond, Inc.	:	**U.S. EPA Docket No. RCRA-03-2021-0099**
2248 Darbytown Road	:	
Henrico, VA 23231	:	**Proceeding under Section 3008(a) and (g) of the**
	:	**Resource Conservation and Recovery Act, as**
Respondent.	:	**amended, 42 U.S.C. Section 6928(a) and (g)**
	:	
Fareva – Richmond, Inc.	:	
2248 Darbytown Road	:	
Henrico, VA 23231	:	
	:	
Facility.	:	
	:	

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" or "EPA") and Fareva-Richmond, Inc. ("Respondent") (collectively the "Parties"), pursuant to Section 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. Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. § 6928(a), 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 (hereinafter jointly referred to as the "Consent Agreement and 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. EPA 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 July 1, 2020, EPA notified the Virginia Department of Environmental Quality ("VADEQ") of EPA's intent to commence this administrative action against Respondent in response to the alleged violations of RCRA Subtitle C that are alleged herein.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the specific factual and jurisdictional allegations set forth in this Consent Agreement and Final Order.

7. 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.

8. 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.

9. 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.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

12. On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted the Commonwealth of Virginia final authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this action, the authorized provisions of Virginia's hazardous waste management program, have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA

reauthorized amendments to the Virginia Hazardous Waste Management Regulations ("VHWMR") on June 20, 2003, on July 30, 2008 and again on November 4, 2013 (with exceptions not relevant here), and the revisions became effective as requirements of RCRA Subtitle C on those dates. The provisions of Virginia's current authorized revised VHWMR are codified at 9 VAC-20-60-12 *et seq*.

13. When EPA last authorized the Virginia hazardous waste regulations on November 4, 2013, EPA approved Virginia's incorporation by reference of the then current federal regulations which were in effect as of July 1, 2010, 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 (2010) is the currently enforceable version of that RCRA regulation in Virginia. 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 as incorporated into the VHWMR are to the 2010 Federal regulations in effect at the time of the VHWMR were authorized.

14. 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 requirements 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 of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

15. Respondent is and was at the time of the violations alleged herein, a corporation of the State of Delaware.

16. 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(15), and 9 VAC 20-60-260.A.

17. Respondent owns and operates a facility located at 2248 and 2300 Darbytown Road in Henrico, VA, 23231 where it manufactures and packages over-the-counter health and beauty products. Two adjacent buildings are located on a 300-acre parcel. The 2300 Building serves as the primary shipping, receiving and warehousing unit, and the manufacturing location of aerosol products. Four on-site laboratories are located in the 2248 Building, and three on-site laboratories are located in the 2300 Building.

18. Respondent is, and at all times relevant to this Consent Agreement, was the "owner" and "operator" of a "facility" as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.

19. Fareva reports as a Large Quantity Generator ("LQG") of hazardous waste at the Facility and operates under the generator permit exemption in lieu of holding a RCRA permit for the treatment, storage or disposal of hazardous waste at the Facility.

20. At all times relevant to the allegations set forth in this Consent Agreement, Respondent stored hazardous waste at a "facility," as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.

21. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is, and has been, a "generator" of, and has engaged in the accumulation in "containers" 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 9 VAC 20-60-260.A.

22. On March 11 and 12, 2020, representatives from EPA and VADEQ conducted a Compliance Evaluation Inspection at the Facility ("Inspection"), to examine the Facility's compliance with Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 *et seq*., the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Commonwealth of Virginia Hazardous Waste Management Program, 9 VAC-20-60-12 *et seq*.

23. The results of the inspection are documented in a Compliance Inspection Report dated May 5, 2020, which EPA provided to Fareva on May 8, 2020.

24. On January 21 and March 4, 2021, Respondent provided additional information to EPA, including a description of the corrective and preventative actions the Facility implemented after the Inspection.

25. On the basis of EPA's findings during the Inspection and the information Respondent provided to EPA, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized VHWMR requirements promulgated thereunder.

Count I
Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status

26. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

27. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility.

28. Respondent operates under the generator permit exemption and thus has never had a permit or interim status, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), for the storage of hazardous waste at the Facility.

29. An LQG such as Fareva could qualify for a temporary (less than 90-day) accumulation permit exemption if it meets all applicable requirements for the exemption. *See* 9 VAC 20-60-262 (incorporating by reference 40 C.F.R. § 262.34 (2010)).

30. At the time of the Inspection, EPA observed the following deficiencies in Fareva's LQG management practices, as detailed in Subsections A through G below.

A. Failure to Mark Containers with the Accumulation Start Date

31. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), with exceptions not relevant herein, provides that a generator who generates greater than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. § 262.34(a)(2). 40 C.F.R. § 262.34(a)(2) requires that "[t]he date upon which each period of accumulation begins is clearly marked and visible for inspection on each container."

32. At the time of the Inspection, near an entryway to the 2300 Building in a tent-like structure near the external aerosol production area, there were three closed and one open 55-gallon containers of spent or damaged aerosol cans that were not marked with accumulation start dates. According to the Respondent, on any given day, the Facility has approximately 80 hazardous waste containers in use.

    a. The open 55-gallon container had no lid and contained 17 spent/damaged aerosol cans inside. The container did not have a label and was not marked with the works "Hazardous Waste" or other identifying words. An accumulation date was not on the container.

    b. The closed 55-gallon containers were affixed with a hazardous waste label and were marked with the words "Danger Flammable Gas." They did not have accumulation start dates. One container was filled with approximately 30 spent/damaged aerosol cans inside, another contained approximately 25 spent/damaged aerosol cans inside, and the last one contained approximately one spent/damaged 1.6 oz aerosol cans inside.

33. At the time of the Inspection, in the Universal Waste Accumulation Area near the receiving area of the 2248 Building were two closed carbon fiber containers for the accumulation of spent 8 foot fluorescent lamps labels as "Universal Waste – Lamps," but neither container was marked with an accumulation start date. According to the Respondent, on any given day, the Facility has approximately 30 universal waste containers in use.

B. Failure to Label Hazardous Waste Containers

34. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), with exceptions not relevant herein, provides that a generator who generates greater than 1,000

kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. § 262.34(a)(3). 40 C.F.R. § 262.34(a)(3) requires that "[w]hile being accumulated on-site, each container and tank is labeled or marked clearly with the words, 'Hazardous Waste.'"

35. At the time of the Inspection, near an entryway to the 2300 Building in a tent-like structure near the external aerosol production area, there was an open 55-gallon container without a lid that contained 17 spent or damaged aerosol cans. This container was not labeled with the words, "Hazardous Waste," in addition to missing an accumulation start date.

C. Failure to Label Satellite Accumulation Hazardous Waste Containers

36. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(c)(1), provides that, "A generator may accumulate as much as 55 gallons of hazardous waste or one kilogram of acutely hazardous waste listed in §§ 261.31 or 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) or (d) of the section provided" containers are marked either with the words "Hazardous Waste" or with other words that identify the contents of the containers. According to the Respondent, the Facility has 40 designated satellite waste areas overall.

37. At the time of the Inspection, in the Raw Materials Lab beneath a bench was a rectangular, clear, plastic box with one closed 5-gallon carboy container collecting waste from a High-Performance Liquid Chromatography ("HPLC") unit above. This container was not marked with the words "Hazardous Waste," or other identifying information. The container had a toxic and flammable label but lacked an accumulation start date. The Facility explained that the container missing a label contained acetonitrile and chloroform that is shipped offsite using hazardous waste codes F003, F005, D001 and D022.

38. At the time of the Inspection, in the Cosmetics Lab, one 5-gallon carboy container had an unsecured funnel in the opening and was not marked with the words "Hazardous Waste," or other identifying information. The Facility explained that the container was accumulating waste acetonitrile solvent, which Fareva considers a D001 ignitable hazardous waste.

39. At the time of the Inspection, in the Cosmetics Lab, a closed, approximately 45-gallon plastic container was accumulating spent tested product aerosol cans and was not marked with the words "Hazardous Waste," or other identifying information. The side of the container was affixed with a Department of Transportation red flammable diamond label. The half-filled spent aerosol cans are a D001 ignitable hazardous waste.

40. At the time of the Inspection, in the Cosmetics Lab, a closed 6-gallon carboy container accumulating waste from the HPLC unit above it was approximately 25% filled with

what the Facility said was D001 flammable solvent liquid. The container was not marked with the words "Hazardous Waste," or other identifying information.

D. Failure to Provide a Written Job Description for Each Position at the Facility Related to Hazardous Waste Management

41. 9 VAC 20-60-262 which incorporates by reference 40 C.F.R. § 262.34(a)(4), provides that a LQG of hazardous waste may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. § 265.16. Under 40 C.F.R. § 265.16(d)(2), the owner or operator must maintain documents and records at the facility that include a written job description for each position at the facility related to hazardous waste management.

42. During the Inspection, EPA requested written job descriptions for each position at the facility related to hazardous waste management. The Facility did not provide any job descriptions at the time of the inspection.

43. Subsequent to the Inspection, after requests from EPA, the Facility provided EPA with nine job descriptions for positions that the Facility stated had responsibilities related to hazardous waste management, six of which reflected amendments to include a description of the positions' hazardous waste management responsibilities.

E. Failure to Maintain and Operate the Facility to Prevent a Release

44. 9 VAC 20-60-262 which incorporates by reference 40 C.F.R. § 262.34(a)(4), provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with the requirements of 40 C.F.R. § 265.31. 40 C.F.R. § 265.31 requires that facilities be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

45. At the time of the EPA Inspection, EPA observed (1) items including pipettes, rubber gloves and syringes on a concrete pad below a metal grate floor of the 2248 Building Hazardous Waste Shed, and (2) spent aerosol cans on the ground in the containment area surrounding the sump of 2300 Building Aerosol Waste Cage 1. The 2248 Building Hazardous Waste Shed consists of a built-in secondary containment unit with a grated floor above.

F. Failure to Keep Hazardous Waste Containers Closed Except When Necessary to Add or Remove Waste

46. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(4), provides that a large quantity generator of hazardous waste may accumulate hazardous waste on

site for 90 days or less without a permit or without having interim status provided that, among other things, "the generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265 . . . ." 40 C.F.R. § 265.173(a) requires that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

47. During the Inspection, EPA observed in the tent-like structure at the northern end of the area for the gas houses, near an entryway into the 2300 Building, there was an open 55-gallon container without a lid with 17 spent or damaged aerosol cans inside (D001). At the time Respondent was not adding or removing waste from the open container.

48. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(i), provides that "a generator may accumulate as much as 55 gallons of hazardous waste . . . 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) or (d) of this section provided he: (i) Complies with . . . § 265.173(a) of this chapter," which in turn requires "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

49. During the Inspection, EPA observed (1) in the Cosmetics Lab there was a 5-gallon carboy container with a latching funnel attached to the container's main opening with an unsecured funnel in the opening; and (2) In the 2300 Building Components Lab entryway there was a 5-gallon carboy container affixed with a hazardous waste label. Attached to the container was a funnel with a latching lid that was not secured. At the time Respondent was not adding or removing waste from the open containers.

G. Failure to Perform Adequate Weekly Inspections of a Hazardous Waste Accumulation Area

50. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), provides that a large quantity generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265. 40 C.F.R. § 265.174 requires 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."

51. During the Inspection, EPA's observations of (1) items including pipettes, rubber gloves and syringes on a concrete pad below a metal grate floor of the 2248 Building Hazardous Waste Shed, and (2) spent aerosol cans on the ground in the containment area surrounding the sump of 2300 Building Aerosol Waste Cage 1, were not included in inspection logs that were provided by Fareva at the time of the Inspection.

52. Based on the acts or omissions detailed in subsections A through G, the requirements of

40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, apply to the Facility because it failed to meet several conditions of the permit exemption.

53. On March 11 and 12, 2020, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270, by storing hazardous waste at the Facility without a permit.

54. In failing to comply with 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 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
Failure to Make a Hazardous Waste Determination

55. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

56. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R.§ 262.11, requires that, "A person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste" using the methods provided in the RCRA regulations.

57. During the Inspection, EPA observed one discarded, spent aerosol can of MoChem® Orange Sno™ degreaser in a trash container used by Fareva for common refuse.

58. On March 11 and 12, 2020, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-262, which incorporates by reference 40 C.F.R.§ 262.11, by failing to make a hazardous waste determination for one spent aerosol can of MoChem® Orange Sno™ degreaser.

59. In failing to comply with 9 VAC 20-60-262, 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 Comply with Uniform Hazardous Waste
Manifest Record Management Requirements

60. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

A. Requirement to Contact Transporter and/or Owner/Operator of the Designated Facility to Determine Status of Hazardous Waste

61. 9 VAC 20-60-262 which incorporates by reference 40 C.F.R.§ 262.42(a)(1), requires that "[a] generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste."

62. A review of Fareva's records for the period of January 1, 2017 through March 12, 2020 showed the following manifest copies received after 35 days from the destination facility with no information regarding contacting facilities for the following manifests:

Manifest #	Date Signed by Initial Transporter	Date Received from Designated Facility	Number of Days
000229575GRR	01/31/2017	03/10/2017	39
000232076GRR	07/28/2017	09/12/2017	47
000232077GRR	08/22/2017	09/29/2017	39
000242115GRR	02/01/2018	03/14/2018	42

According to the Respondent, 53 manifests were generated in 2017, 79 in 2018, 72 in 2019, and 16 through March 12, 2020.

B. Failure to Submit Exception Report when Manifest not Received within 45 days

63. 9 VAC 20-60-262 which incorporates by reference 40 C.F.R.§ 262.42(a)(2), requires that "[a] generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter."

64. A review of Fareva's records showed the following manifest copies from the destination facility received after 45 days with no documentation of an Exception Report being filed with the EPA Region 3 Office:

Manifest #	Date Signed by Initial Transporter	Date Received from Designated Facility	Number of Days
000232076GRR	07/28/2017	09/12/2017	47

According to the Respondent, 53 manifests were generated in 2017, 79 in 2018, 72 in 2019, and 16 through March 12, 2020.

65. On March 11 and 12, 2020, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. §§ 262.40, 262.42, when it failed to contact its destination facility when it did not receive copies of manifests within 35 days, and did not file Exception Reports with the EPA Regional Administrator when it did not receive copies of manifests from the destination facility within 45 days of the date the waste was accepted by the initial transporter.

66. In failing to comply with 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. §§ 262.40, 262.42 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
Failure to Provide Complete Written Job Descriptions for Positions Related to Hazardous Waste Management

67. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

68. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.16(d), "[t]he owner or operator must maintain the following documents and records at the facility: . . . (2) A written job description for each position [related to hazardous waste management] listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions of other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of employees assigned to each position."

69. During the Inspection, EPA requested written job descriptions for each position at the facility related to hazardous waste management. The Facility did not provide any job descriptions at the time of the inspection.

70. Subsequent to the Inspection, after requests from EPA, the Facility provided EPA with nine job descriptions for positions that the Facility stated had responsibilities related to hazardous waste management, six of which reflected amendments to include a description of the positions' hazardous waste management responsibilities.

71. On March 11 and 12, 2020, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.16, when it failed to provide training records, written job titles and written job descriptions for personnel with hazardous waste handling responsibilities.

72. In failing to comply with 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. §§ 264.16 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
Failure to Maintain and Operate a Facility to Minimize the Risk of a Release

73. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

74. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, "[f]acilities must be designed, constructed, maintained, and operated and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

75. At the time of the EPA Inspection, EPA observed (1) items including pipettes, rubber gloves and syringes on a concrete pad below a metal grate floor of the 2248 Building Hazardous Waste Shed, and (2) spent aerosol cans on the ground in the containment area surrounding the sump of 2300 Building Aerosol Waste Cage 1. The 2248 Building Hazardous Waste Shed consists of a built-in secondary containment unit with a grated floor above.

76. On March 11 and 12, 2020, Fareva violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, when it failed to minimize the possibility of an unplanned release that could threaten human health and the environment.

77. In failing to comply with 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31, 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 Keep Containers of Hazardous Waste Closed,
Except When Necessary to Add or Remove Waste

78. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

79. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173(a), "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

80. During the Inspection, EPA observed in the Cosmetics Lab a one 5-gallon carboy container with a latching funnel attached to the container's main opening with an unsecured funnel in the opening, and the container was not marked as hazardous waste or with other words identifying the contents. The Respondent stated that the container was accumulating waste acetonitrile solvent, which Fareva considers a D001, ignitable hazardous waste. At the time Respondent was not adding or removing waste from the open container.

81. During the Inspection, EPA observed in the tent-like structure at the northern end of the area for the gas houses, near an entryway into the 2300 Building there was an open 55-gallon container without a lid with 17 spent or damaged aerosol cans inside (D001). At the time Respondent was not adding or removing waste from the open container.

82. During the Inspection, EPA observed in the 2300 Building Components Lab entryway a 5-gallon carboy container affixed with a hazardous waste label. Attached to the container was a funnel with a latching lid that was not secured. At the time Respondent was not adding or removing waste from the open container.

83. On March 11 and 12, 2020, Fareva violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173(a), when it failed to keep containers holding hazardous waste closed during storage.

84. In failing to comply with 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173(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 VII
Failure to Perform Adequate Weekly Inspections of a Hazardous Waste Accumulation Area

85. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

86. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.174, "[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 and the containment system cause by corrosion or other factors."

87. At the time of the EPA Inspection, EPA observed (1) items including pipettes, rubber gloves and syringes on a concrete pad below a metal grate floor of the 2248 Building Hazardous Waste Shed, and (2) spent aerosol cans on the floor in the containment area

surrounding the sump of 2300 Building Aerosol Waste Cage 1. Neither of these incidents were included in inspection logs that were provided by Fareva at the time of the Inspection.

88. On March 11 and 12, 2020, Fareva violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.174, when it failed to inspect areas with leaking containers or deterioration of containers.

89. In failing to comply with 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.174, 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 PENALTY

90. 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 **TWENTY FIVE THOUSAND ONE HUNDRED AND TWENTY DOLLARS ($25,120)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

91. The civil penalty settlement amount set forth in Paragraph 58, immediately 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 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.

92. Payment of the civil penalty amount, 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 include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2021-0099.

b. All checks shall be made payable to the "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
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 by email to:

Aviva H. Reinfeld
Assistant Regional Counsel
reinfeld.aviva@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

93. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

94. Payment of the civil penalty 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).

95. 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).

96. ADMINISTRATIVE COSTS: The costs of the EPA'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 – Case 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.

97. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). 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).

98. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

99. 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.

100. 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

101. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

102. 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 RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

103. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

104. This Consent Agreement and 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 who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

105. 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 along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

106. 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: Fareva – Richmond, Inc.

Date: 08/27/2021 By: _____

William H. Bunn, General Manager

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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: 9/14/21 By: Melvin, Karen Digitally signed by Melvin, Karen Date: 2021.09.14 08:15:40 -04'00'

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 9/3/21 By: Reinfeld, Aviva Digitally signed by Reinfeld, Aviva Date: 2021.09.03 10:40:59 -04'00'

Aviva H. Reinfeld
Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Fareva – Richmond, Inc.	:	**U.S. EPA Docket No. RCRA-03-2021-0099**
2248 Darbytown Road	:	
Henrico, VA 23231	:	**Proceeding under Section 3008(a) and (g)**
	:	**of the Resource Conservation and Recovery**
Respondent.	:	**Act, as amended, 42 U.S.C. § 6928(a) and (g)**
	:	
Fareva – Richmond, Inc.	:	
2248 Darbytown Road	:	
Henrico, VA 23231,	:	
	:	
Facility.	:	
	:	

FINAL ORDER

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

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 1990 Resource Conservation and Recovery Act ("RCRA") Civil Penalty Policy, as revised in June, 2003, and the statutory factors set forth in Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of RCRA, 42 U.S.C. Section 6928(a) and (g) and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***TWENTY FIVE THOUSAND ONE HUNDRED AND TWENTY DOLLARS ($25,120)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the 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 the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____ By: JOSEPH LISA Digitally signed by JOSEPH LISA Date: 2021.09.14 17:36:35 -04'00'

_____

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