

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: A.J. D'Angelo 5/10/2011
Name of Contact person *Date*

in the Office of Regional Counsel (3RC30) at (215) 814-2480
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/Consent Agreement FMD COLLECTS PAYMENT
 SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Company making payment: Fres-Co System USA, Inc.

The Total Dollar Amount of Receivable: Twenty Nine Thousand Six Hundred Dollars (\$29,600.00)
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2011-0166

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Office of Land Enforcement (3LC70)

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
2. Originating Office (ORC)
3. Designated Program Office

~~**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**~~

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk

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

A.J. D'Angelo (3RC30)
Sr. Asst. Regional Counsel

Direct Dial: (215) 814-2480
Fax: (215) 814-2603

Via Certified Mail, Return Receipt
Requested, Postage Prepaid
(Article No. 7004 2890 0000 5075 7170)

MAY 10 2011

Timothy J. Bergère, Esquire
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109

Re: Fres-Co System USA, Inc.
RCRA I.D. # PAD092858406
Consent Agreement and Final Order
Docket No. RCRA-03-2011-0166

Dear Mr. Bergère:

Please find enclosed true and correct copies of the fully executed Consent Agreement and Final Order (collectively, "CAFO"), that simultaneously initiates and resolves the above-captioned matter. The originals of each document were filed today with the EPA Regional Hearing Clerk.

The enclosed CAFO fully and finally resolves Fres-Co System USA, Inc.'s civil penalty liability for the allegations set forth therein and timely remittance of the agreed penalty should be made pursuant to the instructions and the schedule set forth in the CAFO.

If you have any questions, please do not hesitate to call.

Sincerely,


A.J. D'Angelo
Sr. Assistant Regional Counsel

Enclosures

cc: Ms. Lydia Guy (3RC00)
Regional Hearing Clerk

M. Matlin (3LC70)
Office of Land Enforcement

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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Fres-Co System USA, Inc.
Docket No. RCRA-03-2011-0166

FROM: Marcia E. Mulkey *ME Mulkey*
Regional Counsel (3RC00)

Abraham Ferdas, Director *AF*
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order have been negotiated with Fres-Co System USA, Inc. (hereinafter "Respondent") in initiation and settlement of EPA's civil claims against the Respondent for violations of Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6921-6939e, and the federally-authorized Commonwealth of Pennsylvania Hazardous Waste Regulations in effect at the time of such violations.

In settlement of EPA's claims for civil monetary penalties associated with the violations alleged in the attached Consent Agreement, the parties have negotiated a Twenty Nine Thousand Six Hundred Dollar (\$29,600.00) civil penalty. The settlement amount is an appropriate penalty for the identified violations upon consideration of the statutory penalty factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements. These and other relevant and appropriate factors, including appropriate inflation adjustments pursuant to 40 C.F.R. Part 19 and applicable EPA implementing guidance, 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, and further support the civil penalty settlement amount.

For the reasons set forth above, we recommend that you sign the attached Final Order ratifying the Consent Agreement and assessing the negotiated Twenty Nine Thousand Six Hundred Dollar (\$29,600.00) civil penalty against Respondent.

Upon execution of the Final Order, please return the enclosed documents to A.J. D'Angelo of the Office of Regional Counsel for further processing.

Attachments

cc: Timothy J. Bergere, Esquire
Counsel for Respondent

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

A.J. D'Angelo (3RC30)
Sr. Asst. Regional Counsel

Direct Dial: (215) 814-2480
Fax: (215) 814-2603

Bryson Lehman
U.S. Environmental Protection Agency
Cincinnati Finance Management Center (CFMC)
26 W. Martin Luther King Drive
Cincinnati, OH 45268

MAY 10 2011

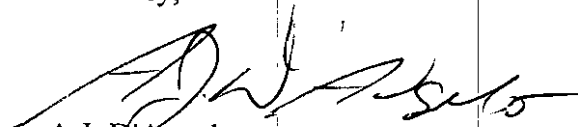
Re: **Fres-Co System USA, Inc.**
Docket No. RCRA-03-2011-0166

Dear Bryson:

Please find enclosed hard copies of an Administrative Penalty Order (Consent Agreement and Final Order with Certificate of Service) and of the associated EARCNF form in the above-referenced matter.

The Final Order calls for the Respondent, Fres-Co System USA, Inc., to pay a civil penalty of \$29,600.00 no later than thirty (30) calendar days after the date on which the CAFO is mailed or hand-delivered to the Respondent. I would appreciate if you could provide me with proof of payment upon receipt of same.

Sincerely,



A.J. D'Angelo
Sr. Assistant Regional Counsel

Enclosures

cc: Martin Matlin
Office of Land Enforcement (3LC70)

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

In Re:)	
)	
Fres-Co System USA, Inc.	)	Docket No. RCRA-03-2011-0166
3005 State Road)	
Telford, Pennsylvania 18969,)	
)	
RESPONDENT.	)	Proceeding Under Section
	)	3008(a) and (g) of the
RCRA I.D. No. PAD092858406,	)	Resource Conservation and
	)	Recovery Act, as amended,
FACILITY.	)	42 U.S.C. § 6928(a) and (g)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Fres-Co System USA, Inc. (or "Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commences and concludes this administrative proceeding against Respondent.
3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program

established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations (“PaHWR”) were authorized by the U.S. Environmental Protection Agency (“EPA” or the “Agency”) pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on three separate occasions (September 26, 2000, January 20, 2004 and April 29, 2009). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004 and June 29, 2009, respectively. The provisions of Pennsylvania’s current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization and October 12, 2005 for the April 29, 2009 PaHWR authorization.
5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA’s determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at its facility located at 3005 State Road, Telford, Pennsylvania 18969, RCRA I.D. No. PAD092858406 (the “Facility”).
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated June 23, 2010, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PaDEP” or the “Department”), of EPA’s intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 7, immediately above.

9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.
13. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. Respondent is a Delaware corporation with offices and a manufacturing facility located at 3005 State Road, Telford, Pennsylvania 18969, RCRA I.D. No. PAD092858406 (hereinafter, the "Facility").
17. Respondent manufactures industrial and commercial grade packaging products at its Facility.
18. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and 25 Pa. Code Section 260a.10.

19. At all times relevant to this CA, Respondent has been the “owner” and “operator” of a “facility” (*i.e.*, the Facility), where the Respondent engaged in “management or hazardous waste management” activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1., and as defined in 25 Pa. Code § 260a.10.
20. As described below, Respondent is and, at all times relevant to this CAFO has been, a “generator” of “solid waste”, “hazardous waste” and “universal waste” at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1., including, but not necessarily limited to, hazardous wastes having EPA Hazardous Waste Numbers D001, F003 and/or F005, as specified in 40 C.F.R. §§ 261.21, 261.24 and 261.31 and incorporated by reference in 25 Pa. Code § 261a.1.
21. At all times relevant to this CAFO, and as described below, Respondent has engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” at the Facility, as the term “storage” is defined in 25 Pa. Code Section 260a.10. and as the remaining terms are defined in 40 C.F.R. § 260.10., as incorporated by reference in 25 Pa. Code § 260a.1.
22. The Facility is a hazardous waste storage “facility” as that term is defined in 40 C.F.R. § 260.10 and 25 Pa. Code Section 260a.10.
23. Respondent has submitted to EPA a Notification of Hazardous Waste Activity, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which include operation as a large quantity generator of hazardous waste, *i.e.*, a generator of greater than 1,000 kilograms of non-acute hazardous waste in a calendar month.
24. On March 10, 2010, a duly authorized representative of EPA (the “EPA Inspector”) conducted a compliance evaluation inspection of the Facility (the “Inspection” or “Facility Inspection”) to assess compliance with federally authorized PaHWR requirements.
25. On April 20, 2010, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to a Facility representative seeking additional information regarding Respondent’s hazardous waste generation and management practices at the Facility and requesting the production of specified documents and information.
26. A Facility representative replied to EPA’s IRL by correspondence dated May 13, 2010 (“IRL Response”).

27. On the basis of the Facility Inspection and a review of the supplemental information provided to EPA in response to the IRL, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

Permit Requirements

28. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1., no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
29. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1., for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70., as incorporated by reference into 25 Pa. Code § 270a.1.

Permit Exemption Conditions - Accumulation Time Requirements

30. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10., generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
- a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart I [Use and Management of Containers], including the requirement that containers always be kept closed during storage, except when it is necessary to add or remove waste;
 - b. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container;

- c. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container must be labeled or marked clearly with the words “Hazardous Waste”; and
 - d. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in pertinent part and with exceptions not herein applicable, that the generator must comply with the requirements for owners or operators in Subpart D [Contingency Plan and Emergency Procedures] in 40 C.F.R. Part 265 and with 40 C.F.R. § 265.16 [relating to personnel training].
31. 40 C.F.R. § 262.34(c)(1), as incorporated by reference in 25 Pa. Code § 262a.10., further provides, in relevant part and with exceptions not herein applicable, 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 the requirements of 40 C.F.R. § 262.34(a), provided that he: (i) complies with §§ 265.171, 265.172, and 265.173(a) of 40 C.F.R. Part 265, Subpart I; and (ii) marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

Regulatory Permit Exemption Conditions - Management of Containers

32. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I [Use and Management of Containers], including, in relevant part, the provisions of 40 C.F.R. § 265.173(a), which require that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”

Regulatory Permit Exemption Conditions - Contingency Plan and Emergency Procedures

33. 25 Pa. Code § 265a.1. incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart D [Contingency Plan and Emergency Procedures], including the content of contingency plan provisions set forth at 40 C.F.R. § 265.52(d), which require, in relevant part, that “[t]he [contingency] plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see [40 C.F.R.] § 265.55), and the list must be kept up to date.”

Regulatory Permit Exemption Conditions - Personnel Training

34. 25 Pa. Code § 265a.1. incorporates by reference the personnel training requirements and

provisions of 40 C.F.R. § 265.16, including the provisions set forth at:

40 C.F.R. § 265.16(a)(1), which require, in relevant part, that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part and that the owner or operator must ensure that this program includes all the elements described in the document required under 40 C.F.R. § 265.16(d)(3);

40 C.F.R. § 265.16(b), which require, in relevant part, that facility personnel must successfully complete the program required in 40 C.F.R. § 265.16(a) within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later;

40 C.F.R. § 265.16(c), which require, in relevant part, that facility personnel must take part in an annual review of the initial training required in 40 C.F.R. § 265.16(a);

40 C.F.R. § 265.16(d)(1), (3) and (4), which require, in relevant part, that the owner or operator must maintain documents and records at the facility that include the job title for each position at the facility related to hazardous waste management, the name of the employee filling each job, a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. § 265.16(d)(1) and records that document that the training or job experience required under 40 C.F.R. § 265.16(a), (b), and (c) has been given to, and completed by, facility personnel; and

40 C.F.R. § 265.16(e), which require, in relevant part, that training records on current personnel must be kept until closure of the facility and that training records on former employees must be kept for at least three years from the date the employee last worked at the facility.

COUNT I
(Operating Without a Permit)

35. The allegations of Paragraphs 1 through 34 of this CA are incorporated herein by reference.
36. On March 10, 2010, Respondent was storing hazardous waste at the Facility in containers. During the course of the Facility Inspection conducted on that date, the containers of

hazardous waste described immediately below (by container storage location, content, size and/or other physical description(s)) were being stored by the Respondent at the Facility and were observed by the EPA Inspector at a time when it was not necessary for the Respondent to add or remove waste from any of the containers:

- a. In a satellite accumulation area (*i.e.*, an area at or near the point of generation where such waste initially accumulates under the control of the operator of the process generating the waste) located across from Facility Rotogravure Press 201, Respondent was storing greater than 55 gallons of hazardous waste in the following containers:
 - i. a 55-gallon drum container of D001, F003, and/or F005 laminating adhesive run-off hazardous waste that was marked with the words "Hazardous Waste" but which was not fully closed (*i.e.*, a funnel protruded from the container's bung hole and the funnel lid was partially open and ajar);
 - ii. a full 55-gallon drum container of D001, F003, and/or F005 non-adhesive recovery solvent hazardous waste that was not fully closed (*i.e.*, the container lid was partially open and ajar), and which was labeled with an original product label but was not marked with the words "Hazardous Waste" or with other words that properly identified the contents of the container; and
 - iii. a 30-gallon drum container of D001, F003 and/or F005 hazardous waste cleanup debris that was closed and marked with a faded, paint-covered and difficult to read "Hazardous Waste" label, such that the container was not "marked clearly with words 'Hazardous Waste' or with other words that identif[ied] the contents of the container."
- b. In a satellite accumulation area located across from Facility Rotogravure Press 202, Respondent was storing greater than 55 gallons of hazardous waste in the following containers:
 - i. a 55-gallon drum container of D001, F003, and/or F005 adhesive solvent hazardous waste that was marked with the words "Hazardous Waste" but was not fully closed (*i.e.*, a funnel protruded from the container's bung hole and the funnel lid was partially open and ajar; and a second bung hole was open with the bung hole cap placed several inches away from the opening);

- ii. a 55-gallon drum container of D001, F003, and/or F005 non-adhesive recovery solvent hazardous waste that was not marked with the words "Hazardous Waste" or with other words that identified the contents of the container; and
 - iii. a 30-gallon drum container of D001, F003 and/or F005 hazardous waste cleanup debris that was closed and marked with a "Hazardous Waste" label.
- c. In a satellite accumulation area located across from Facility Rotogravure Press 203, Respondent was storing greater than 55 gallons of hazardous waste in the following containers:
- i. a 55-gallon drum container of D001, F003, and/or F005 adhesive solvent hazardous waste that was not fully closed (*i.e.*, containing an open funnel protruding from its bung hole and with a second bung hole that was open) and which was not marked with the words "Hazardous Waste" or with other words that properly identified the contents of the container; and
 - ii. a 55-gallon drum container of D001, F003, and/or F005 non-adhesive recovery solvent hazardous waste that was not marked with the words "Hazardous Waste" or with other words that identified the contents of the container;
- d. In a satellite accumulation area located across from Facility Flexigraphic Press 204/205, Respondent was storing greater than 55 gallons of hazardous waste in the following containers:
- i. a 55-gallon drum container of D001, F003, and/or F005 hazardous waste rags and debris that was marked with the words "Hazardous Waste" but which was left open, with a large wedge cut out of the container lid; and
 - ii. a 55-gallon drum container of D001, F003, and/or F005 adhesive solvent hazardous waste that was closed and marked with the words "Hazardous Waste."
- e. In the Facility's Ink Storage Warehouse primary less-than-90-day hazardous waste accumulation area, Respondent was storing a 55-gallon drum container of D001, F003, and/or F005 adhesive solvent hazardous waste that was closed and marked with the words "Hazardous Waste", but which was not marked with the date upon which the period of hazardous waste accumulation had begun.

- f. In a satellite accumulation area located beneath Distillation Unit #1 in the Facility's Washroom, Respondent was storing D001, F003, and/or F005 hazardous waste still bottom materials generated from Distillation Unit #1 in an open 55-gallon drum container that was not marked with the words "Hazardous Waste" or with other words that identified the contents of the container.
- g. In a satellite accumulation area located beneath Distillation Unit #2 in the Facility's Washroom, Respondent was storing D001, F003, and/or F005 hazardous waste still bottom materials generated from Distillation Unit #2 in an open 55-gallon drum container that was not marked with the words "Hazardous Waste" or with other words that identified the contents of the container.
- h. In a satellite accumulation area located in the Facility Washroom, Respondent was storing greater than 55 gallons of hazardous waste in the following containers:
 - i. D001, F003, and/or F005 hazardous waste distillation activity drop-out liquid from the Washroom "Drop-out Tank" in an open 5-gallon bucket container that was not marked with the words "Hazardous Waste" or with other words that identified the contents of the container;
 - ii. D001, F003, and/or F005 hazardous waste distillation activity drop-out liquid (originally collected in the open 5-gallon bucket container identified in the preceding paragraph) in a 55-gallon drum container that was closed, marked with the words "Hazardous Waste" and labeled with a hazardous waste accumulation start date of July 21, 2009; and
 - iii. D001, F003, and/or F005 hazardous waste distillation activity drop-out liquid (also originally collected in the open 5-gallon bucket container located beneath "Drop-out Tank") in a full 55-gallon drum container that was closed, marked with the words "Hazardous Waste Distiller Slop" and with a hazardous waste accumulation start date of March 10, 2010.
- i. In a causeway located between the Facility's Ink Room and Ink Storage Warehouse (*i.e.*, an area of the Facility that is separated from the Ink Room by steel doors routinely kept in a closed position), Respondent was storing D001, F003, and/or F005 hazardous waste generated in the Facility's Ink Room in a closed 55-gallon drum container that was marked with the words "Hazardous Waste" and with the date upon which the period of hazardous waste accumulation had begun, but which was being stored in an area of the Facility that was not "under the control of the operator of the process generating the waste."

- j. In a satellite accumulation area located in the Facility's Quality Control Laboratory, Respondent was storing D001, F003, and/or F005 hazardous waste solvent contaminated towels and cotton balls generated through cleaning activities in a small red plastic garbage container, lined with a plastic bag, that was closed but was not marked or labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
37. On March 10, 2010, Respondent failed to comply with the permit exemption conditions set forth in 40 C.F.R. §§ 262.34(c)(1), (c)(1)(i) and (c)(1)(ii), pertaining to satellite accumulation by a generator, by:
- a. storing greater than 55 gallons of hazardous waste in each of the satellite accumulation areas identified in Paragraphs 36.a, 36.b, 36.c, 36.d., and 36.h, above, in noncompliance with 40 C.F.R. § 262.34(c)(1);
 - b. storing hazardous waste in a container located in the causeway area identified in Paragraph 36.i, above, which is an area of the Facility that is separated from the point of generation of such waste by steel doors that are routinely kept in a closed position, such that this location is not "under the control of the operator of the process generating the waste" and is not a proper satellite accumulation area for such waste, in noncompliance with 40 C.F.R. § 262.34(c)(1);
 - c. failing to keep containers holding hazardous waste and stored in satellite accumulation areas of the Facility closed during storage at a time when it was not necessary to add or remove waste, as identified and described in each of Paragraphs 36.a.i, 36.a.ii, 36.b.i, 36.c.i, 36.d.i, 36.f, 36.g, and 36.h.i, above, in noncompliance with 40 C.F.R. § 262.34(c)(1)(i), which incorporates by reference the requirements of 40 C.F.R. § 265.173(a); and
 - d. storing in satellite accumulation areas at the Facility containers of hazardous waste that were not marked, and that were not clearly marked, with the words "Hazardous Waste," or with other words that identified the hazardous waste contents of the containers, as identified and described in each of Paragraphs 36.a.ii, 36.a.iii, 36.b.ii, 36.c.i, 36.c.ii, 36.f, 36.g, 36.h.i, and 36.j, above, in noncompliance with 40 C.F.R. § 262.34(c)(1)(ii).
38. On March 10, 2010, Respondent failed to comply with the permit exemption conditions set forth in 40 C.F.R. §§ 262.34(a)(1), (2), (3) and (4), for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator by:

- a. storing hazardous waste at the Facility in containers that were not kept closed during storage at a time when it was not necessary to add or remove waste, as previously alleged in Paragraph 37.b., above, and as previously identified and described in each of Paragraphs 36.a.i, 36.a.ii, 36.b.i, 36.c.i, 36.d.i, 36.f, 36.g, and 36.h.i, above, and in noncompliance with 40 C.F.R. § 262.34(a)(1), which incorporates by reference the requirements of 40 C.F.R. § 265.173(a);
 - b. storing hazardous waste at the Facility in the containers identified and described in Paragraphs 36.a.i, 36.a.ii, 36.a.iii, 36.b.i, 36.b.ii, 36.b.iii, 36.c.i, 36.c.ii, 36.d.i, 36.d.ii, 36.e, 36.f, 36.g, 36.h.i and 36.j, above, that were not clearly marked with the date upon which the period of accumulation began being visible for inspection, in noncompliance with 40 C.F.R. § 262.34(a)(2); and
 - c. storing hazardous waste at the Facility in containers that were not labeled or marked clearly with the words "Hazardous Waste", as previously identified and described in each of Paragraphs 36.a.ii, 36.a.iii, 36.b.ii, 36.c.i, 36.c.ii, 36.f, 36.g, 36.h.i, and 36.j, above, in noncompliance with 40 C.F.R. § 262.34(a)(3).
39. On March 10, 2010, the Integrated Environmental Emergency Response Plan maintained by the Respondent at the Facility did not comply fully with the requirements of 40 C.F.R. Part 265, Subpart D [Contingency Plan and Emergency Procedures], by failing to include the addresses of all persons qualified to act as emergency coordinator, as required pursuant to 40 C.F.R. § 262.34(a)(4), which incorporates by reference the "content of contingency plan provisions" of 40 C.F.R. Part 265, Subpart D, as set forth in 40 C.F.R. § 265.52(d).
40. Respondent also failed to comply with 40 C.F.R. § 262.34(a)(4), which incorporates by reference the personnel training requirements of 40 C.F.R. § 265.16, in each of calendar years 2005 through 2009 by:
- a. failing to provide an annual review of the initial training required under 40 C.F.R. §§ 265.16(a), as required pursuant to 40 C.F.R. §§ 265.16(c), in calendar years 2005 through 2009 to a total of six (6) Facility personnel who were required to have such training, including the Facility Awareness Training Supervisor, the Facility Emergency Coordinators and other Facility employees who engaged in hazardous waste management activities (including signing hazardous waste manifests), as identified below:
 - i. 4 Facility employees did not receive an annual training review in 2005;
 - ii. 6 Facility employees did not receive an annual training review in 2006;
 - iii. 6 Facility employees did not receive an annual training review in 2007;
 - iv. 2 Facility employees did not receive an annual training review in 2008; and

- v. 3 Facility employees did not receive an annual training review in 2009.
 - b. failing to maintain documents and records at the Facility (which has not undergone RCRA "closure" within the meaning of 40 C.F.R. § 265.16(e)) for current employees that included: the job title for each position at the Facility related to hazardous waste management; a written description of the type and amount of both introductory and continuing training to be given to each person filling such a position; and records documenting that the training or job experience required under 40 C.F.R. § 265.16(a), (b), and (c) had been given to, and completed by, all such Facility personnel, as required pursuant to 40 C.F.R. § 265.16(d)(1), (3) and (4).
41. For the reasons and during each of the time periods and dates identified in Paragraphs 37 through 40, above, Respondent failed to comply with the permit exemption conditions, identified in Paragraphs 30 through 34, above, for temporary (*i.e.*, 90 days or less) and satellite accumulation of hazardous waste by a generator at the Facility, as required pursuant to 25 Pa. Code Section 262a.10, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
42. For each of the reasons and during each of the time periods and dates identified in Paragraphs 37 through 40, above, Respondent operated the Facility without a permit, interim status or valid exemption to the permitting/interim status requirements.
43. Respondent violated 25 Pa. Code § 270a.1., which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II

(Failure to Comply with Hazardous Waste Exception Reporting Requirements)

44. The allegations of paragraphs 1 through 43 of this CA are incorporated herein by reference as though fully set forth at length.
45. 25 Pa. Code Section 260a.3.(a)(1) provides that the term "Department" shall be substituted for the term "Regional Administrator" whenever the latter term is used in a provision of 40 C.F.R. Parts 260 - 279.
46. 25 Pa. Code Section 262a.10 incorporates by reference the recordkeeping requirements of 40 C.F.R. § 262.40(a), which provide that: "[a] generator must keep a copy of each manifest signed in accordance with [40 C.F.R.] § 262.23(a) for three years or until he

- receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”
47. 25 Pa. Code Section 262a.10 further incorporates by reference the exception reporting recordkeeping requirements of 40 C.F.R. § 262.42(a)(2), as modified by 25 Pa. Code Section 260a.3.(a)(1) and by 25 Pa. Code Section 262a.42 (which does not incorporate by reference the phrase “for the Region in which the generator is located” that is contained in 40 C.F.R. § 262.42(a)(2)), and collectively provide that a generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the Department 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.
48. At the time of the March 10, 2010 Facility Inspection, the copy of Hazardous Waste Manifest No. 002051925SKS for an off-site shipment of one container of D006, D008, D018, D027, D037, D039 hazardous waste that was signed by the initial transporter of the waste on January 26, 2010 and that the Respondent maintained at the Facility did not include the handwritten signature of the owner or operator of the facility designated to receive the hazardous waste.
49. In its May 13, 2010 IRL Response, Respondent indicated that it made telephone contact with the designated facility which received the waste at some unspecified time and confirmed that facility’s receipt of the container of D006, D008, D018, D027, D037, D039 hazardous waste that accompanied Hazardous Waste Manifest No. 002051925SKS on February 9, 2010.
50. At no time did the Respondent submit an Exception Report to the Department with respect to Hazardous Waste Manifest No. 002051925SKS.
51. Respondent violated 25 Pa. Code Section 262a.10, which incorporates by reference (and with the modifications noted at 25 Pa. Code Sections 260a.3.(a)(1) and 262a.42) the exception reporting requirements of 40 C.F.R. § 262.42(a)(2), through its failure to submit an Exception Report to the Department when it did not receive a copy of Hazardous Waste Manifest No. 002051925SKS that contained the handwritten signature of the owner or operator of the designated facility receiving the waste within 45 days of the January 26, 2010 date that such waste was accepted by the initial transporter.

COUNT III

(Failure to Provide Required Personnel Training)

52. The allegations of Paragraphs 1 through 51, above, are incorporated herein by reference as though fully set forth at length.
53. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(a) - (c), requires, in relevant part, that facility personnel must: (a) successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264; (b) complete such program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.
54. In accordance with the factual description provided in Paragraph 40.a, above, Respondent failed to ensure that Facility employees whose duties included providing awareness training, Facility emergency coordination and signing hazardous waste manifests had successfully completed a required annual training review of their initial training in each of the calendar years 2005 through 2009, in accordance with the requirements of 40 C.F.R. § 264.16(c).
55. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.16(a) - (c), by failing to ensure that Facility personnel successfully completed a required annual training review of their initial training to teach them to perform their duties in a way that ensured the Facility's compliance with the requirements of 40 C.F.R. Part 264 during each of calendar years 2005 through 2009.

COUNT IV

(Failure to Maintain Personnel Training Documents and Records)

56. The allegations of Paragraphs 1 through 55 of this CA, are incorporated herein by reference as though fully set forth at length.
57. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(d)(1), (3) and (4), requires, in relevant part, that the owner or operator must maintain the following documents and records at the facility: the job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job; a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 40 C.F.R. § 264.16(d)(1); and records that document that the training or job experience required under 40 C.F.R. § 264.16(a), (b), and (c) has been given to, and

- completed by, Facility personnel.
58. 25 Pa. Code Section 264a.1, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(e), further requires, in relevant part, that training records on current personnel be kept until closure of the Facility.
59. In accord with the factual description provided in Paragraph 40.b, above, in each of calendar years 2005 through 2009 Respondent failed to maintain documents and records at the Facility (which has not undergone RCRA “closure” within the meaning of 40 C.F.R. § 264.16(e)) for current employees that included: the job title for each position at the Facility related to hazardous waste management; a written description of the type and amount of both introductory and continuing training to be given to each person filling such a position; and records documenting that the training or job experience required under 40 C.F.R. § 264.16(a), (b), and (c) had been given to, and completed by, all such Facility personnel, as required pursuant to 40 C.F.R. § 264.16(d)(1), (3) and (4).
60. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d) and (e), by failing to maintain in each of calendar years 2005 through 2009: required documents and records of the job titles, and the names of all persons filling positions related to Facility hazardous waste management; a written description of the type and amount of introductory and continuing training to be given to each such person; and records documenting that the required training or job experience had been given to, and completed by, each such person.

COUNT V

(Failure to Comply with Facility Contingency Plan Content Requirement)

61. The allegations of Paragraphs 1 through 60 of this CA are incorporated herein by reference as though fully set forth at length.
62. Pursuant to 25 Pa. Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. §§ 264.51 and .52, each owner or operator must have a contingency plan for his facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water, and which contains the information specified in 40 C.F.R. § 264.52.
63. Pursuant to 25 Pa. Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.52(d), “[t]he [contingency] plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see [40 C.F.R.] § 264.55), and the list must be kept up to date.”

64. On March 10, 2010, the contingency plan maintained by the Respondent at the Facility did not include the addresses of all persons qualified to act as emergency coordinator at the Facility, and did not comply fully with the requirements of 40 C.F.R. § 265.52(d)
65. Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.52(d), by failing to review and/or immediately amend the Facility contingency plan to properly list the names, addresses, and phone numbers of all persons qualified to act as emergency coordinator and/or to keep such list up to date.

COUNT VI

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

66. The allegations of Paragraphs 1 through 65 of this CA are incorporated herein by reference as though fully set forth at length.
67. 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
68. On March 10, 2010, the containers of hazardous waste previously identified in Paragraphs 36.a.i, 36.a.ii, 36.b.i, 36.c.i, 36.d.i, 36.f, 36.g, and 36.h.i, above, were being stored at the Facility and were not kept closed at times when it was not necessary to add or remove waste.
69. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding hazardous waste in containers that were not kept closed during storage, when it was not necessary to add or remove waste.

COUNT VII

(Failure to Contain Universal Waste Lamps Properly)

70. The allegations of Paragraphs 1 through 69, above, are incorporated herein by reference as though fully set forth at length.
71. 25 Pa. Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part 273, including the “Standards for Small Quantity Handlers of Universal Waste” which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the universal waste lamp management standards of 40 C.F.R. § 273.13(d).

72. 40 C.F.R. § 273.13(d) provides, in pertinent part that “[a] small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”
73. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste lamps.
74. On March 10, 2010, at the time of the Facility Inspection, Respondent was accumulating in the Maintenance Area of the Facility:
- a. numerous universal waste lamps in five (5) cardboard box containers, four (4) of which were not closed, that were labeled as containing “Universal Waste Bulbs”; and
 - b. several additional universal waste lamps in a loose and un-packaged/un-contained manner on a metal shelf.
75. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.13(d), by storing universal waste lamps at the Facility in an un-packaged/un-contained manner and in containers that were not closed.

COUNT VIII

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

76. The allegations of Paragraphs 1 through 75, above, are incorporated herein by reference as though fully set forth at length.
77. The 40 C.F.R. Part 273, Subpart B, “Standards for Small Quantity Handlers of Universal Waste” that are incorporated by reference in 25 Pa. Code Section 266b.1 include the 40 C.F.R. § 273.14(e) provisions governing universal waste lamp labeling/marketing requirements.
78. 40 C.F.R. § 273.14(e) requires that “[e]ach lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste — Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.

79. On March 10, 2010, at the time of the Facility Inspection, and as identified and described in Paragraph 74.b, above, Respondent was loosely accumulating several universal waste lamps on a shelf located in the Maintenance Area of the Facility.
80. The universal waste lamps identified in Paragraphs 74.b and 79, above, were not labeled or marked with any one of the applicable and required phrases (i.e., "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)") and each of the five (5) boxes of universal waste lamps identified in Paragraph 74.a, above, improperly were labeled as containing "Universal Waste *Bulbs*." (Emphasis supplied).
81. Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), by failing to properly label or mark universal waste lamps that it was accumulating at the Facility.

COUNT IX
***(Failure to Provide Correct and Complete
Land Disposal Restriction Notices to TSD Facility)***

82. The allegations of paragraphs 1 through 81 of this CA are incorporated herein by reference as though fully set forth at length.
83. 25 Pa. Code Section 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), provides, in relevant part, that: "A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the [land disposal restriction] treatment standards in [40 C.F.R.] § 268.40, 268.45, or § 268.49 [of 40 C.F.R. Part 268, Subpart D]. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste."
84. 25 Pa. Code Section 268a.1, also incorporates by reference 40 C.F.R. § 268.7(a)(2), which further provides, in relevant part, that "[i]f the waste or contaminated soil does not meet the [land disposal restriction] treatment standards, . . . the generator must send a one-time written notice to each treatment, storage or disposal facility receiving the waste" which includes such information.
85. Prior to the date of the earliest waste shipment identified in Paragraph 87.a, below, Respondent determined, through knowledge and/or testing, that D001, F003, F005 hazardous waste that it generated at the Facility and shipped off-site to Giant Resource Recovery - Sumter, Inc. ("GRR") for treatment and disposal was a land disposal restricted ("LDR") hazardous waste that did not meet applicable 40 C.F.R. Part 268, Subpart D LDR

treatment standards.

86. On multiple occasions in calendar year 2007, 2008, 2009 and 2010, Respondent sent written notices to GRR with D001, F003, F005 LDR hazardous waste shipments from the Facility which correctly identified the accompanying wastes as LDR hazardous wastes that did not meet the LDR treatment standards of 40 C.F.R. Part 268, Subpart D.
87. Despite Respondent's prior determination that the D001, F003, F005 hazardous wastes that it generated at the Facility and shipped off-site to GRR for treatment and disposal were LDR hazardous wastes that did not meet applicable 40 C.F.R. Part 268, Subpart D, LDR treatment standards and its submission of numerous LDR notices to GRR that correctly indicated that such wastes did not meet 40 C.F.R. Part 268, Subpart D LDR treatment standards:
- a. on January 2, 2007 (Manifest Tracking No. 000003892GRR) and on June 10, 2008 (Manifest Tracking No. 000049316GRR) Respondent sent written notices to GRR that failed to indicate whether the accompanying D001, F003, F005 LDR hazardous wastes did, or did not, meet the LDR treatment standards of 40 C.F.R. Part 268, Subpart D: and
 - b. on December 18, 2007 (Manifest Tracking No. 000003894GRR), March 18, 2008 (Manifest Tracking No. 000049319GRR), April 8, 2008 (Manifest Tracking No. 000049318GRR), May 20, 2008 (Manifest Tracking No. 000049317GRR), July 22, 2008 (Manifest Tracking No. 000049300GRR), November 11, 2008 (Manifest Tracking No. 000049302GRR), February 10, 2009 (Manifest Tracking No. 005643553JJK), March 17, 2009 (Manifest Tracking No. 000049312GRR), April 21, 2009 (Manifest Tracking No. 000049311GRR) and June 30, 2009 (Manifest Tracking No. 000049309GRR), Respondent sent written notices to GRR with D001, F003, F005 LDR hazardous waste shipments in which Respondent *incorrectly stated* that the accompanying LDR hazardous wastes met the LDR treatment standards of 40 C.F.R. Part 268, Subpart D.
88. Respondent violated 25 Pa. Code Section 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a), by providing to a treatment, storage or disposal facility receiving Respondent's LDR hazardous wastes multiple written LDR notices that contained LDR treatment standard information about the accompanying LDR hazardous wastes that was, at times, incomplete and, at other times, incorrect.

IV. CIVIL PENALTY

89. Respondent agrees to pay a civil penalty in the amount of **Twenty Nine Thousand Six**

Hundred Dollars (\$29,600.00), in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CA. Such civil penalty shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

90. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant’s consideration of a number of factors, including the penalty criteria set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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 Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
91. Payment of the civil penalty as required by paragraph 89, above, 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 (***Docket No. RCRA-03-2011-0166***).
 - b. All checks shall be made payable to “**United States Treasury**”.
 - c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Bryson Lehman - (513-487-2123)

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency")

- f. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact : John Schmid - (202) 874-7026, or REX, 1-866-234-5681

- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete the form.

92. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

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

and

A.J. D'Angelo
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

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

94. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

95. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter

9. EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

96. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

97. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

98. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the federally-authorized PaHWR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

99. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

100. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

101. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

IX. PARTIES BOUND

102. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

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

XI. ENTIRE AGREEMENT

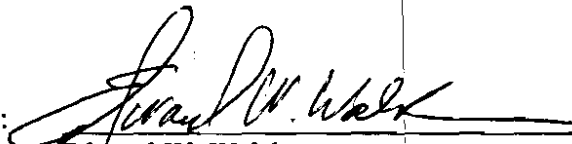
104. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent Fres-Co System USA, Inc.:

Date:

4/29/11

By:



Edward W. Walsh
Senior V.P. Operations
Fres-Co System USA, Inc.

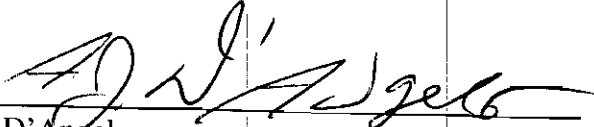
In Re: Fres-Co System USA, Inc.
RCRA I.D. No. PAD092858406

Consent Agreement
Docket No. RCRA-03-2011-0166

For the Complainant:

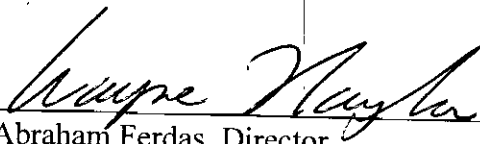
U.S. Environmental Protection Agency, Region III

Date: 5/2/2011

By: 
A.J. D'Angelo
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached FO.

Date: 5/5/2011

By: 
Abraham Ferdas, Director
for Land and Chemicals Division

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

In Re:)	
)	
Fres-Co System USA, Inc.	)	Docket No. RCRA-03-2011-0166
3005 State Road)	
Telford, Pennsylvania 18969,)	
)	
RESPONDENT.	)	Proceeding Under Section
	)	3008(a) and (g) of the
RCRA I.D. No. PAD092858406,	)	Resource Conservation and
	)	Recovery Act, as amended,
FACILITY.	)	42 U.S.C. § 6928(a) and (g)

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Fres-Co System USA, 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.

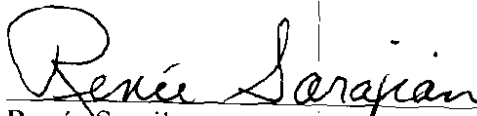
NOW, THEREFORE, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended, *inter alia*, by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the *Consolidated Rules of Practice*, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that

the civil penalty of Twenty Nine Thousand Six Hundred Dollars (\$29,600.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C. § 6928(a), IT IS HEREBY ORDERED that Respondent pay a civil monetary penalty of Twenty Nine Thousand Six Hundred Dollars (\$29,600.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

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

5/10/11

Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

