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2011 AUG 23 PM 12:01

U.S. EPA REGION IX
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7 **UNITED STATES**
8 **ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

10 **IN THE MATTER OF:**

11
12 CHEMICAL WASTE MANAGEMENT, INC.,
13
14 Respondent.

Docket No.
RCRA-09-2011- 0016

**CONSENT AGREEMENT
AND
FINAL ORDER
PURSUANT TO 40 C.F.R.
SECTIONS 22.13 and 22.18**

15 **CONSENT AGREEMENT**

16 Complainant, the United States Environmental Protection Agency, Region IX
17 ("Complainant" or "EPA"), and Respondent Chemical Waste Management, Inc. ("Respondent"),
18 the parties herein, having agreed that settlement of this matter is in the public interest and that
19 entry of this Consent Agreement and Final Order, pursuant to 40 Code of Federal Regulations
20 ("C.F.R.") Sections 22.13 and 22.18, ("CA/FO"), without further litigation is the most
21 appropriate means of resolving this matter;

22 NOW, THEREFORE, Complainant and Respondent hereby agree as follows:

23 A. **PRELIMINARY STATEMENT**

24 1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)
25 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
26 § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
27

1 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits
2 ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States
3 Environmental Protection Agency, Region IX. Respondent is Chemical Waste
4 Management, Inc. ("CWM"), a corporation organized under the laws of the State of
5 Delaware.

6 2. Respondent owns and operates a commercial hazardous waste treatment, storage, and
7 disposal facility in western Kings County, California, approximately 3.5 miles southwest
8 of Kettleman City (the "Facility").

9 3. The Facility is subject to a Hazardous Waste Permit, Permit Number 02-SAC-03 (the
10 "Permit"), issued by the California Department of Toxic Substances Control ("DTSC").

11 4. Respondent is the "permittee" under the Permit for the Facility (Permit Number 02-SAC-
12 03).

13 5. The Permit authorizes Respondent to accept, store, treat and dispose of various solid,
14 semi-solid, and liquid hazardous wastes.

15 6. At the time of the violations alleged, Respondent generated multi-source leachate (F039)
16 at the Facility.

17 7. At the time of the violations alleged, the Facility was a large quantity generator ("LQG")
18 of hazardous waste.

19 8. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences
20 and concludes this proceeding, wherein EPA alleges that Respondent managed hazardous
21 waste in violation of the RCRA Hazardous Waste Management requirements, 42 U.S.C.
22 §§ 6921 - 6939e, the implementing regulations, and state regulations adopted pursuant to
23 the federally authorized California hazardous waste management program.

24 9. EPA is enforcing California hazardous waste management program requirements as
25 approved and authorized by the United States.

26 10. On August 1, 1992, the State of California received authorization to administer the
27

1 hazardous waste management program in lieu of the federal program pursuant to Section
2 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. This authorization was
3 updated on September 26, 2001 (*see* 66 Fed. Reg. 49118, September 26, 2001). The
4 authorized program is established pursuant to the Hazardous Waste Control Law, Chapter
5 6.5 of Division 20 of the California Health and Safety Code ("H&SC"), and the
6 regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of
7 Regulations ("C.C.R."), 22 C.C.R. §§ 66001 *et seq.*

8 11. The State of California has been authorized for all the regulations referenced in this
9 CA/FO.¹ Citations in this CA/FO are to California hazardous waste management
10 program requirements, followed by the corresponding federal citations provided in
11 brackets.

12 B. GENERAL ALLEGATIONS

13 12. Respondent is, and at all times referred to herein was, a "person" as defined in 22 C.C.R.
14 § 66260.10 [*see also* 40 C.F.R. § 260.10].

15 13. Respondent was the "owner" or "operator" of a facility as defined in 22 C.C.R.
16 § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

17 14. Respondent was the "owner" or "operator" of a "disposal facility" as defined in 22 C.C.R.
18 § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

19 15. Respondent was the "owner" or "operator" of a "landfill" as defined in 22 C.C.R.
20 § 66260.10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.

21 16. Respondent was a "generator" of "hazardous waste" as defined in 22 C.C.R. § 66260.10
22

23 ¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California
24 Code of Regulations. EPA is enforcing the California hazardous waste management program
25 requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR
26 32726, July 23, 1992) and the Final Authorization of Revisions to the Hazardous Waste
27 Management Program as approved and authorized by the United States on September 26, 2001
(*see* 66 FR 49118, September 26, 2001). Citations to the federal regulations are included for
informational purposes.

- 1 [see also 40 C.F.R. § 260.10] at the time of the violations alleged.
- 2 17. Respondent was engaged in the “storage” of “hazardous waste” as defined in 22 C.C.R.
3 § 66260.10 [see also 40 C.F.R. § 260.10] at the time of the violations alleged.
- 4 18. Respondent was engaged in the “treatment” of “hazardous waste” as defined in 22 C.C.R.
5 § 66260.10 [see also 40 C.F.R. § 260.10] at the time of the violations alleged.
- 6 19. Respondent was engaged in the “land disposal” of “hazardous waste” as defined in 22
7 C.C.R. § 66260.10 at the time of the violations alleged.
- 8 20. Respondent was engaged in the “disposal” of “hazardous waste” as defined in 22 C.C.R.
9 § 66260.10 [see also 40 C.F.R. § 260.10] at the time of the violations alleged.
- 10 21. Respondent generated and accumulated materials that are “wastes” as defined in 22
11 C.C.R. §§ 66260.10 and 66261.2 [see also 40 C.F.R. §§ 260.10 and 261.2 for definition
12 of “solid waste”].
- 13 22. Respondent generated and accumulated “hazardous waste” as defined in California
14 H&SC § 25117 and 22 C.C.R. §§ 66260.10 and 66261.3 [see also RCRA Section
15 1004(5), 42 U.S.C. 6903(5), and 40 C.F.R. §§ 260.10 and 261.3].
- 16 23. Respondent generated “leachate” as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R.
17 § 260.10] at the time of the violations alleged.
- 18 24. Respondent operates a laboratory at the Facility.
- 19 25. On February 8-12, 2010, March 1-2, 2010, and April 15, 2010, EPA conducted RCRA
20 Compliance Evaluation Inspections at the Facility.
- 21 26. Based upon the findings EPA made during the inspections and additional information
22 obtained subsequent to the inspections, EPA alleges that Respondent violated RCRA
23 Hazardous Waste Management requirements, 42 U.S.C. §§ 6921 – 6939e, and its
24 implementing regulations, and the federally authorized California hazardous waste
25 management program, 22 C.C.R. Division 4.5, and its implementing regulations, at the
26 Facility.

1 27. EPA alleges that Respondent (1) failed to make a hazardous waste determination in
2 violation of 22 C.C.R. § 66268.7(a)(1) [*see also* 40 C.F.R. § 268.7(a)(1)]; (2) land
3 disposed of wastes that did not meet treatment standards in violation of 22 C.C.R.
4 § 66268.40(a) and (e) [*see also* 40 C.F.R. § 268.40(a) and (e)]; (3) failed to comply with
5 conditions of its hazardous waste permit in violation of 22 C.C.R. § 66270.30 [*see also*
6 40 C.F.R. § 270.30]; (4) failed to properly close containers of hazardous waste in
7 violation of 22 C.C.R. § 66264.173(a) [*see also* 40 C.F.R. § 264.173(a)], and (5) failed
8 to maintain and operate the facility to minimize the release of hazardous waste or
9 hazardous waste constituents in violation of 22 C.C.R. § 66264.31 [40 C.F.R. § 264.31].

10 28. Under Section 3006 of RCRA, 42 U.S.C. § 6926, violations of the State of California's
11 authorized RCRA Hazardous Waste Management Program are federally enforceable.
12 Respondent is therefore subject to the powers vested in the EPA Administrator by Section
13 3008 of RCRA, 42 U.S.C. § 6928.

14 29. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue
15 orders assessing a civil penalty for any past or current violation, or requiring compliance
16 immediately or within a specified time for violation of any requirement of Subtitle C of
17 RCRA, Sections 3001 - 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e.

18 30. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of
19 Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of
20 RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to
21 issuing an order under Section 3008 of RCRA in that state. EPA notified the State of
22 California as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

23 31. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA
24 Regional Administrator for Region IX, who has redelegated this authority to the Director
25 of the Waste Management Division.
26
27

1
2 C. ALLEGED VIOLATIONS

3 COUNT I

4 (Failure to Make Hazardous Waste Determination for Land Disposal)

5 32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were
6 set forth here in their entirety.

7 33. 22 C.C.R. § 66268.7(a) [*see also* 40 C.F.R. § 268.7(a)] requires that a generator of
8 hazardous waste determine if the waste meets applicable treatment standards before land
9 disposal. This determination can be done by either testing or using knowledge of the
10 waste.

11 34. Respondent generates multisource leachate, Waste Code F039, at the Facility.

12 35. Respondent is engaged in the land disposal, as defined at 22 C.C.R. § 66260.10, of F039
13 waste at the Facility.

14 36. Sample results for F039 waste collected from the risers on December 5, 6, 15 and 27,
15 2006; December 17, 2007; July 13, 2007; December 26, 2007; October 8, 2008; and
16 November 10, 2009 at the Facility showed exceedances of treatment standards for land
17 disposal.

18 37. Respondent failed to consider sample results for F039 waste collected on December 5, 6,
19 15 and 27, 2006; December 17, 2007; July 13, 2007; December 26, 2007; October 8,
20 2008; and November 10, 2009 to determine if F039 waste at the Facility met applicable
21 treatment standards for land disposal.

22 38. Respondent failed to determine if F039 waste at the Facility met applicable treatment
23 standards for land disposal, in violation of 22 C.C.R. § 66268.7(a) [*see also* 40 C.F.R.
24 § 268.7(a)].

1 COUNT II

2 (Impermissible Land Disposal of Prohibited Waste)

3 39. Paragraphs 1 through 38 above are incorporated herein by this reference as if they were
4 set forth here in their entirety.

5 40. 22 C.C.R. § 66268.40(a) [*see also* 40 C.F.R. § 268.40(a)] mandates that a prohibited
6 waste in the table “Treatment Standards for Hazardous Wastes” may be land disposed
7 only if it meets the requirements found in the table.

8 41. 22 C.C.R. § 66268.40(e) [*see also* 40 C.F.R. § 268.40(e)] mandates that underlying
9 hazardous constituents in characteristic wastes (D001 – D043) that are subject to
10 treatment standards shall meet Universal Treatment Standards, found in section 66268.48
11 [40 C.F.R. § 268.48], Table Universal Treatment Standards, prior to land disposal.

12 42. Respondent land disposed D004, D006, D007, D008, and D010 waste that did not meet
13 treatment standards.

14 43. Respondent land disposed F006, F037, D001, D006, and D010 waste prior to proper
15 treatment and subsequently excavated such waste for treatment.

16 44. Respondent land disposed prohibited wastes that did not meet treatment standards in
17 violation of 22 C.C.R. §§ 66268.40(a) and (e) [*see also* 40 C.F.R. §§ 268.40(a) and (e)].

18 COUNT III

19 (Failure to Comply with Hazardous Waste Permit)

20 45. Paragraphs 1 through 44 above are incorporated herein by this reference as if they were
21 set forth here in their entirety.

22 46. 22 C.C.R. § 66270.30(a) [*see also* 40 C.F.R. § 270.30(a)] requires that Respondent
23 comply with all conditions of the permit.

24 47. The Permit incorporates by reference the requirements of the Waste Analysis Plan
25 (“WAP”) for the Facility.

26 48. The WAP requires that Respondent follow the requirements of EPA Method 6010B,
27

1 Inductively Coupled Plasma Atomic Emission Spectrometry.

- 2 49. Section 7.4 of EPA Method 6010B requires that the laboratory discontinue a sample
3 analysis if the initial calibration verification (“ICV”) or continuing calibration verification
4 (“CCV”) cannot be verified as required.
- 5 50. Section 8.6.1.1 of EPA Method 6010B requires that the laboratory terminate the sample
6 analysis, correct the problem, and recalibrate the instrument, if the results of the ICV and
7 CCV do not agree within 10% of the expected value.
- 8 51. Section 8.6.1.3 of Method 6010B requires that the laboratory repeat a sample analysis two
9 more times and average the results if the results of the calibration blank do not agree
10 within three times the instrumental detection limits (“IDL”).
- 11 52. Section 8.6.1.3 of Method 6010B requires that the laboratory terminate the analysis,
12 correct the problem, recalibrate, and reanalyze the previous ten (10) samples, if the
13 average of the calibration blank results is not within three standard deviations of the
14 background mean.
- 15 53. Section 8.6.1.3 of EPA Method 6010B mandates that if the blank is less than 1/10 the
16 concentration of the action level of interest, and no sample is within ten percent of the
17 action limit, analyses need not be rerun and recalibration need not be performed before
18 continuation of the run.
- 19 54. During 2006 through 2010, in the laboratory at the Facility, Respondent had numerous
20 instances of calibration failures during analyses to be conducted in accordance with EPA
21 Method 6010B.
- 22 55. During 2006 through 2008, in the laboratory at the Facility, Respondent produced
23 analytical results that did not meet accuracy requirements.
- 24 56. During 2006 through 2010, Respondent did not discontinue sample analyses when the
25 calibration samples could not be verified as required, or when results failed to meet
26 accuracy requirements.

1 57. Respondent failed to follow the requirements of EPA Method 6010B, as required by the
2 Permit, in violation of 22 C.C.R. § 66270.30(a) [*see also* 40 C.F.R. § 270.30(a)].

3 COUNT IV

4 (Failure to Close Containers of Hazardous Waste)

5 58. Paragraphs 1 through 57 above are incorporated herein by this reference as if they were
6 set forth here in their entirety.

7 59. 22 C.C.R. §66264.173(a) [*see also* 40 C.F.R. §264.173(a)] requires that owners and
8 operators manage containers holding hazardous waste so that such containers are always
9 closed during storage, except when it is necessary to add or remove waste.

10 60. On February 8, 2010, EPA inspectors observed three containers of universal waste lamps,
11 i.e., fluorescent light tubes, that were open at a time when waste was neither being added
12 nor removed from the containers.

13 61. Respondent's failure to close the containers of hazardous waste violated 22 C.C.R.
14 § 66264.173 (a) [*see also* 40 C.F.R. § 264.173(a)].

15 COUNT V

16 (Failure to Maintain and Operate Facility to Minimize Releases)

17 62. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were
18 set forth here in their entirety.

19 63. Respondent stored or disposed of waste lamps, i.e., fluorescent light tubes, which are
20 "hazardous waste" as defined in California H&SC § 25117 and 22 C.C.R. §§ 66260.10
21 and 66261.3 [*see also* RCRA Section 1004(5), 42 U.S.C. 6903(5), and 40 C.F.R.
22 §§ 260.10 and 261.3].

23 64. 22 C.C.R. § 66264.31 [*see also* 40 C.F.R. § 264.31] requires that hazardous waste
24 facilities must be maintained and operated to minimize the possibility of a fire, explosion,
25 or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
26 constituents to air, soil, or surface water which could threaten human health or the
27

1 environment.

2 65. On February 8, 2010, EPA inspectors observed a broken lamp, i.e., fluorescent light tube,
3 and a small amount of glass on the floor of the Facility.

4 66. Respondent failed to operate the Facility to minimize the possibility of unplanned
5 releases of hazardous waste or hazardous waste constituents, in violation of 22 C.C.R.
6 § 66264.31 [*see also* 40 C.F.R. § 264.31].

7 D. CIVIL PENALTY

8 67. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection
9 Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-
10 SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$37,500) per day for each
11 violation of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*

12 68. Based upon the facts alleged herein and upon those factors which EPA must consider
13 pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil
14 Penalty Policy, including the seriousness of the violations, any good faith efforts by
15 Respondent to comply with applicable requirements, and any economic benefit accruing
16 to Respondent, as well as such other matters as justice may require, EPA proposes that
17 Respondent be assessed FOUR HUNDRED THOUSAND DOLLARS (\$400,000) as the
18 civil penalty for the violations alleged herein. The proposed penalty is consistent with the
19 "RCRA Civil Penalty Policy," dated June 2003, as adjusted by the Debt Collection
20 Improvement Act.

21 E. ADMISSIONS AND WAIVERS

22 69. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations
23 set forth in Sections A and B of this CA/FO. Respondent consents to and agrees not to
24 contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce
25 its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel
26 compliance with this CA/FO in any enforcement proceedings, either administrative or
27

1 judicial, or to impose sanctions for violations of this CA/FO.

2 70. Respondent neither admits nor denies any allegations of fact or law set forth in Section C
3 of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the
4 allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing
5 on any issue relating to the factual allegations or legal conclusions set forth in this
6 CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42
7 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without
8 adjudication. In addition, Respondent hereby waives any rights Respondent may have to
9 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

10 F. PARTIES BOUND

11 71. This CA/FO shall apply to and be binding upon Respondent and its agents, successors
12 and assigns and upon all persons acting under or for Respondent, until such time as all
13 tasks required under Section G have been completed, the civil penalty required under
14 Section D has been paid in accordance with Section H, and any delays in performance
15 and/or stipulated penalties have been resolved. At such time as those matters are
16 concluded, this CA/FO shall terminate and constitute full settlement of the violations
17 alleged herein. For purposes of this CA/FO, the tasks identified in paragraph 74(i) and (j)
18 are deemed completed if the provisions of paragraph 74(i) and (j) are incorporated into a
19 final, federally enforceable, Hazardous Waste Permit for the Facility.

20 72. No change in ownership or corporate, partnership or legal status relating to the Facility
21 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

22 73. The undersigned representative of Respondent hereby certifies that he is fully authorized
23 by Respondent to enter into this CA/FO, to execute and to legally bind Respondent.

24 G. COMPLIANCE TASKS

25 74. Respondent shall complete the following tasks in the prescribed time frames:

26 a. Within one hundred and twenty (120) days of the effective date of this CA/FO, at
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1 the Facility, Respondent shall install a laboratory information management system
2 (“LIMS”), a software-based laboratory and information management system, to
3 support quality control maintenance at the Facility laboratory;

4 b. After the effective date of this CA/FO, but prior to conducting any metals analysis
5 for treatment recipe development at the Facility, Respondent shall purchase and
6 install the following equipment at the Facility laboratory – one ICP-OES
7 instrument, two tumblers, and one cold-vapor atomic absorption instrument
8 configured for the analysis of mercury; and Respondent shall purchase and install
9 one additional ICP-OES instrument prior to using the Facility laboratory to
10 conduct post-treatment metals analysis for compliance purposes;

11 c. Upon the effective date of this CA/FO, and for at least twenty-four (24) months
12 after the effective date of this CA/FO, Respondent shall refrain from using the
13 Facility laboratory to conduct post-treatment metals analysis for compliance
14 purposes, and continue to use an independent laboratory to provide post-treatment
15 metals analysis for the Facility (Respondent may not resume performing such
16 analyses at the Facility laboratory without written approval from EPA);

17 d. After twenty-four (24) months following the effective date of this CA/FO,
18 Respondent may request written approval from EPA to resume performing post-
19 treatment metals analysis for compliance purposes at the Facility laboratory; for
20 approval to resume performing such analyses at the Facility laboratory,
21 Respondent must (i) successfully complete a laboratory audit of the Facility
22 laboratory by an independent, third-party laboratory, such as TestAmerica
23 Laboratories, Inc., (ii) submit a final report on the laboratory audit from such
24 independent, third-party laboratory to EPA, documenting that Respondent has
25 successfully completed the laboratory audit; and (iii) provide documentation
26 showing that the Facility laboratory satisfies all the criteria specified in
27

1 Attachment A to this CA/FO. EPA shall promptly approve or disapprove a
2 written request by Respondent to resume performing post-treatment metals
3 analysis for compliance purposes. EPA shall approve such request if
4 Respondent's request satisfactorily demonstrates that it has successfully completed
5 the laboratory audit and demonstrates that it satisfies all the criteria specified in
6 Attachment A to this CA/FO. If EPA disapproves such request, EPA shall provide
7 a written statement identifying the reason(s) for any disapproval, specifying which
8 requirement or criteria has not been satisfied. Following any such disapproval,
9 Respondent may resubmit a request for approval, with appropriate
10 corrections/clarifications demonstrating that any requirement or criteria identified
11 by EPA has been satisfied.;

12 e. Upon the effective date of this CA/FO, Respondent shall annually, for calendar
13 years 2011, 2012, 2013, 2014, and 2015, sample and profile leachate from each of
14 the hazardous waste landfill phases and each surface impoundment to determine
15 whether the leachate has to be treated before it can be land disposed, and retain
16 the analytical results and corresponding report at the Facility for ten (10) years
17 (nothing in this CA/FO relieves Respondent of the obligation to determine if
18 waste has to be treated before it can be land disposed);

19 f. Within sixty (60) days of the effective date of this CA/FO, Respondent shall cover
20 each leachate collection tank associated with each hazardous waste landfill phase
21 and surface impoundment at the Facility to prevent the intrusion of rain during
22 storm events;

23 g. Within sixty (60) days of the effective date of this CA/FO, for each leachate
24 collection tank associated with each hazardous waste landfill phase and surface
25 impoundment at the Facility, Respondent shall modify stormwater best
26 management practices at the Facility to prevent the diversion of stormwater into
27

1 the leachate collection tanks;

2 h. Within fifteen (15) days of the effective date of this CA/FO, Respondent shall
3 modify the cyanide treatment procedures at the Facility to include evaluation of
4 cyanide destruction after the chlorination process, prior to stabilization and
5 disposal;

6 i. Within sixty (60) days of the effective date of this CA/FO, and every calendar
7 year thereafter, Respondent shall, take samples from six (6) separate locations
8 within the liquid in the P-16 surface impoundment at the Facility, including at
9 least one from the center and one of the skimming (if any), analyse each sample
10 for the full suite of F039 hazardous constituents, and retain the analytical results
11 until ten (10) years after closure of the P-16 surface impoundment;

12 j. Within sixty (60) days of the effective date of this CA/FO, and every three years
13 thereafter, Respondent shall, take samples from six (6) separate locations within
14 the sludge in the P-16 surface impoundment at the Facility, including one from the
15 center, analyse each sample for the full suite of F039 hazardous constituents, and
16 retain the analytical results until ten (10) years after closure of the P-16 surface
17 impoundment; and

18 k. Within thirty (30) days of completion of each task required by paragraph 74(a),
19 (b), (f), (g) and (h) of this CA/FO, Respondent shall certify to EPA in writing that
20 Respondent has completed the task as required by this CA/FO, and submit
21 substantiating documentation documenting that the task is complete, including,
22 for example, photographs, invoices, reports, or records; and the signatory for
23 Respondent shall certify under penalty of law that this certification of compliance
24 is based upon true, accurate and complete information, which the signatory can
25 verify personally or regarding which the signatory has inquired of the person or
26 persons directly responsible for gathering the information.

1 H. PAYMENT OF CIVIL PENALTY

2 75. Respondent hereby consents to the assessment of a civil penalty in the amount of FOUR
3 HUNDRED THOUSAND DOLLARS (\$400,000) in settlement of the civil penalty
4 claims of the United States for the violations of the RCRA Hazardous Waste
5 Management requirements, 42 U.S.C. §§ 6921 - 6939e, and the federally authorized
6 California hazardous waste management program, including 22 C.C.R. § 66268.7(a)(1)
7 [see also 40 C.F.R. § 268.7(a)(1)]; 22 C.C.R. § 66268.40(a) and (e) [see also 40 C.F.R.
8 § 268.40(a) and (e)]; 22 C.C.R. § 66270.30 [see also 40 C.F.R. § 270.30]; 22 C.C.R.
9 § 66264.173(a) [see also 40 C.F.R. § 264.173(a)]; and 22 C.C.R. § 66264.31 [40 C.F.R.
10 § 264.31], as alleged in Section C above.

11 76. Respondent shall submit payment of the civil penalty of FOUR HUNDRED
12 THOUSAND DOLLARS (\$400,000) within thirty (30) calendar days of the Effective
13 Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order
14 contained in this CA/FO, having been approved and issued by the Regional Judicial
15 Officer is filed. Payment shall be made by wire transfer to the account of the U.S.
16 Treasury at the Federal Reserve Bank of New York.

17 Federal Reserve Bank of New York
18 ABA: 021030004
19 Account Number: 68010727
20 SWIFT address: FRNYUS33
21 33 Liberty Street
22 New York NY 10045
23 Field Tag 4200 of the Fedwire message should read:
24 "D 68010727 Environmental Protection Agency"

25 See also, http://www.epa.gov/ocfo/finservices/payment_instructions.htm

26 77. At the time payment is so made, a copy of the transmittal form shall be sent to:

27 Regional Hearing Clerk (RC-1)
28 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

1 Kandice Bellamy (WST-3)
2 Waste Management Division
3 U.S. Environmental Protection Agency - Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 78. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM
7 6-8000), the payment must be received within thirty (30) calendar days of the Effective
8 Date of this CA/FO to avoid additional charges. If payment is not received within thirty
9 (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the
10 current rate published by the United States Treasury as described at 40 C.F.R. § 13.11(a).
11 A late penalty charge will be imposed after thirty (30) calendar days with an additional
12 charge for each subsequent 30-day period, in accordance with 40 C.F.R. § 13.11(b). A
13 6% per annum penalty will further apply on any principal amount not paid within ninety
14 (90) calendar days of the due date, as described at 40 C.F.R. § 13.11(c). Respondent
15 further will be liable for stipulated penalties as set forth below for any payment not
16 received by its due date.

17 79. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and
18 shall not be deducted by Respondent or any other person or entity for federal, state or
19 local taxation purposes.

20 I. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

21 80. In addition to the interest and per annum penalties described above, in the event that
22 Respondent fails to pay the full amount of the penalty within the time specified in
23 Section H, Respondent agrees to pay Complainant a stipulated penalty in the amount of
24 up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) for each day the default
25 continues.

26 81. In addition to the interest and per annum penalties described above, in the event
27 Respondent fails to comply with any of the compliance tasks identified in paragraph 74,
28 Respondent shall, for each such failure, be liable for a stipulated penalty in the amount of

1 up to ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500) for each day from the
2 first to fifteenth day, THREE THOUSAND DOLLARS (\$3,000) for each day from the
3 sixteenth to thirtieth day, and FIVE THOUSAND DOLLARS (\$ 5,000) for each day
4 thereafter that the failure continues.

5 82. All penalties shall begin to accrue on the date that performance is due or a violation
6 occurs, and shall continue to accrue through the final day of correction of the
7 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
8 penalties for separate violations.

9 83. All penalties owed to EPA under this Section shall be due within thirty (30) days of
10 receipt of a notification of noncompliance. Such notification shall describe the
11 noncompliance and shall indicate the amount of penalties due. Interest at the current rate
12 published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to
13 accrue on the unpaid balance at the end of the thirty-day period.

14 84. All penalties under this Section shall be made payable by certified or cashier's check to
15 "Treasurer of the United States" and shall be remitted to:

16 US Environmental Protection Agency
17 Fines and Penalties
18 Cincinnati Finance Center
19 PO Box 979077
20 St. Louis, MO 63197-9000

21 85. All payments shall indicate the name of the Facility, any EPA identification number of
22 the Facility, Respondent's name and address, and the EPA docket number of this action.
23 At the time payment is made, Respondents shall send a copy of the payment transmittal
24 to:

25 Kandice Bellamy (WST-3)
26 Waste Management Division
27 U.S. Environmental Protection Agency - Region IX
28 75 Hawthorne Street
San Francisco, CA 94105

86. The payment of stipulated penalties shall not alter in any way Respondent's obligation to

1 complete the performance required hereunder.

2 87. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
3 other remedies or sanctions which may be available to EPA by reason of Respondent's
4 failure to comply with any of the requirements of this CA/FO.

5 88. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
6 discretion, waive any portion of stipulated penalties that have accrued pursuant to this
7 CA/FO.

8 89. The payment of stipulated penalties specified in this CA/FO shall represent civil penalties
9 assessed by EPA and shall not be deducted by Respondent or any other person or entity
10 for federal, state or local taxation purposes.

11 J. NOTIFICATION

12 90. All notices and submissions to EPA shall include a certification under penalty of law that
13 the information submitted is true, accurate and complete, which the signatory can verify
14 personally or regarding which the signatory has inquired of the person or persons directly
15 responsible for gathering the information. All notices and submissions shall be sent by
16 email and fax, and shall be effective upon receipt, unless otherwise provided herein. All
17 notices and submissions sent to EPA shall be directed to:

18 Rich Vaile, Associate Waste Director
19 Waste Management Division, WST-1
20 U.S. Environmental Protection Agency, Region IX
21 75 Hawthorne St.
22 San Francisco, CA 94105
23 Phone: 415-972-3378
24 Fax: 415-947-3530
25 Email: vaile.rich@epa.gov

26 and

27 Kandice Bellamy
28 Waste Management Division, WST-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105
Phone: 415-972-3304
Fax: 415-947-3530
Email: bellamy.kandice@epa.gov

1 91. All notices and submissions to Respondent shall be directed to:

2 General Counsel – Western Group
3 Waste Management
4 7025 N. Scottsdale Rd., Suite 200
5 Scottsdale, AZ 85253
6 Main Phone: 408-624-8400
7 Fax: 480-951-5280
8 Email: rlongo@wm.com

9 and

10 District Manager
11 Chemical Waste Management, Inc.
12 P.O. Box 471
13 35251 Old Skyline Road
14 Kettleman City, CA 93239
15 Main Phone: 559-386-6195
16 Fax: 559-386-6288
17 Email: bhenry3@wm.com

18 K. RESERVATION OF RIGHTS

19 92. EPA expressly reserves all rights and defenses that it may have.

20 93. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
21 remedies, both legal and equitable, including the right to require that Respondent perform
22 tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory
23 and regulatory powers, authorities, rights and remedies, both legal and equitable, which
24 may pertain to Respondent's failure to comply with any of the requirements of this
25 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)
26 of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to
27 sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or
28 criminal, which EPA has under RCRA, the Comprehensive Environmental Response,
Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other
statutory, regulatory or common law enforcement authority of the United States.

94. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of
its obligations to comply with any applicable local, state, or federal laws and regulations.

1 95. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
2 preclude EPA from taking additional enforcement actions should EPA determine that
3 such actions are warranted except as they relate to a Respondent's liability for federal
4 civil penalties for the specific alleged violation and facts as set forth in Section C of this
5 CA/FO.

6 96. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
7 not relieve Respondent of any obligation to obtain and comply with any local, state, or
8 federal permits. Compliance by Respondent with the terms of this CA/FO shall not
9 relieve Respondent of any obligations to comply with RCRA or any other applicable
10 local, state, or federal laws and regulations.

11 97. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
12 from liability, if any, for the costs of any response actions taken by EPA.

13 L. OTHER CLAIMS

14 98. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
15 cause of action or demand in law or equity by or against any person, firm, partnership,
16 entity or corporation for any liability it may have arising out of or relating in any way to
17 the generation, storage, treatment, handling, transportation, release, or disposal of any
18 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
19 contaminants found at, taken to, or taken from the Facility.

20 M. MISCELLANEOUS

21 99. This CA/FO may be amended or modified only by written agreement executed by all
22 parties, i.e., EPA and Respondent.

23 100. The headings in this CA/FO are for convenience of reference only and shall not affect
24 interpretation of this CA/FO.

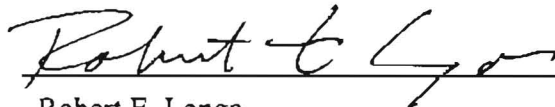
25 101. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
26 proceeding.
27
28

1 102. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
2 on the date that the Final Order contained in this CA/FO, having been approved and
3 issued by the Regional Judicial Officer, is filed.
4

5 **IT IS SO AGREED,**

6 For Respondent **CHEMICAL WASTE MANAGEMENT, INC.**
7


8 7/29/2011
9 Date



10 Robert E. Longo
11 Assistant Secretary
12 Chemical Waste Management, Inc.

13 For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**
14

15 8/19/2011
16 Date



17 Jeff Scott
18 Director
19 Waste Management Division
20 United States Environmental Protection Agency,
21 Region IX
22
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28

1
2 **FINAL ORDER**
3

4 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (U.S. EPA Docket
5 No. RCRA-09-2011- *0016*) be entered and that Respondent pay a civil penalty in the
6 amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000) by wire transfer to the
7 account of the U.S. Treasury at the Federal Reserve Bank of New York, within thirty (30) days
8 after the Effective Date of this Consent Agreement and Final Order, and perform all tasks
9 required by this Consent Agreement and Final Order. A copy of the wire transfer form shall be
10 sent to the EPA Region IX addresses specified in Section H of this Consent Agreement and Final
11 Order within such 30-day period.

12
13 This Final Order shall be effective upon filing by the Regional Hearing Clerk..
14

15
16 08/23/11

17 Date

18 

19 Steven Jawgiel
20 Regional Judicial Officer
21 United States Environmental Protection Agency,
22 Region IX
23
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28

ATTACHMENT A

1. Twelve consecutive months of quality control charts, prepared from certified analytical results, for calibration blanks for each compliance metal demonstrating the 95% confidence limit results within the range of zero plus or minus ten percent the corresponding universal treatment standard ("UTS") concentration;
2. Twelve consecutive months of quality control charts, prepared from certified analytical results, for ICV results for each compliance metal demonstrating the 95% confidence limit results within the range of certified value plus or minus ten percent;
3. Verification that a Lower Level ICV prepared at or below the corresponding universal treatment standard concentration is analyzed for each compliance metal;
4. Verification that a quality control sample(s), referred to as the interference check solution ("ICS"), is always analyzed at the beginning and end of each analytical run to demonstrate that common interferences do not affect the accuracy of compliance metal results;
5. Verification that the ICS sample(s) concentration is/are prepared in accordance with EPA Method 6010B, or currently approved California Environmental Laboratory Accreditation Program ("ELAP") method (e.g., "EPA Method 6010C");
6. Twelve consecutive months of quality control charts, prepared from certified analytical results, for ICS results for each compliance metal demonstrating the 95% confidence limit results within the range of zero value plus or minus ten percent of the corresponding UTS or within $\pm 20\%$ of the true value, as applicable;
7. Verification that all post-analysis data reporting procedures are documented in a written standard operating procedure;
8. Verification that results within 10% of the corresponding UTS are verified by repeat analysis or the method of standard additions, or the sample can be identified as a failure and the waste retreated;
9. Verification that standard operating procedures for all methods used by the laboratory require alternate methods of analysis or independent reanalysis by outside laboratory be required whenever method quality control criteria fail and cannot be corrected prior to reanalysis;
10. Verification that each ICP operator, within six-months of job assignment, receives instrument manufacturer training on how to operate the ICP instrument and either manufacturer or third-party training on how to identify and correct spectral interferences.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order in the matter of Chemical Waste Management, Inc., has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent

by Certified Mail, Return Receipt Requested, to:

Robert E. Longo
General Counsel – Western Group
Waste Management, Inc.
7025 N. Scottsdale Rd., Suite 200
Scottsdale, AZ 85253

Certified Mail No. 7003 3110 0006 1998 1854

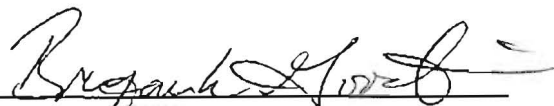
by Regular Mail to:

Bob Henry
Chemical Waste Management, Inc.
P.O. Box 471
35251 Old Skyline Road
Kettleman City, CA 93239

by Hand Delivery to:

Letitia D. Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

8/23/11
Date


Bryan Goodwin
Regional Hearing Clerk