



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7009 1680 0000 7663 6773
RETURN RECEIPT REQUESTED

Mr. Steve A. Vanderboom
President
Pace Analytical Services, Inc.
1800 Elm Street, SE
Minneapolis, MN 55414

Re: Consent Agreement and Final Order
Pace Analytical Services, Inc.
1241 Bellevue Street, Suite 9
Green Bay, WI 54302
EPA I.D. No.: WIR000032136
Docket No: **RCRA-05-2013-0016**

Dear Mr. Vanderboom:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on September 30, 2013, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$60,133 in the manner prescribed in paragraphs 207 and 208 of the CAFO, and reference all checks with the Docket No.: **RCRA-05-2013-0016**. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

for Gary J. Victorine
Chief,
RCRA Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2013-0016
)	
PACE ANALYTICAL SERVICES, INC.))	Proceeding to Commence and Conclude
1241 Bellevue Street, Suite 9)	an Action to Assess a Civil Penalty
Green Bay, Wisconsin, 54302)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
)	
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Pace Analytical Services, Inc., a corporation doing business in the State of Wisconsin.
4. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

7. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

8. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

9. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

10. Respondent admits the jurisdictional allegations in this CAFO and that in agreeing to sign this CAFO Respondent neither admits nor denies the factual allegations or the legal conclusions in this CAFO.

11. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

12. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

13. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

14. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S.

EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

17. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

General Allegations

18. Respondent was and is a “person” as defined by WAC NR § 660.10(90), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. At all times relevant to this CAFO, Respondent was the “operator” or “owner”, as those terms are defined under WAC NR § 660.10(87) and (88) respectively, and 40 C.F.R. § 260.10, of a facility located at 1241 Bellevue Street, Suite 9, Green Bay, Wisconsin, 54302 (Facility).

20. At all times relevant to this CAFO, Respondent’s Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

21. Respondent’s Facility is a “facility,” as that term is defined under WAC NR § 660.10(43)(a) and 40 C.F.R. § 260.10.

22. On July 14, 2011, U.S. EPA conducted a compliance evaluation inspection of the Facility (the “inspection”).

23. During the inspection, the review of waste determinations/profiles indicated that there was no profile or waste determination available for a one ½-gallon container that contained sample waste which was observed in the Low Level Mercury Room.

24. The ½-gallon container is a “container,” as that term is defined under WAC NR § 660.10(14) and 40 C.F.R. § 260.10.

25. A person, who generates a solid waste, shall determine if that waste is a hazardous waste. See WAC NR § 662.011 [40 C.F.R. § 262.11].

26. At the time of the inspection, Respondent did not know the contents of the ½-gallon container.

27. At the time of the inspection, Respondent’s representatives stated that they were not

sure if the waste was hazardous or non-hazardous. One representative then stated that the waste was not characterized properly.

28. Since the inspection, however, Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected waste determination procedures and management of hazardous waste containers of waste in this area.

29. In addition, during the inspection, the review of waste determinations/profiles indicated that there was an inadequate waste determination/profile for the PCB hazardous waste RCRA metal soil waste stream. The review of manifests indicated that there were three manifests that included a polychlorinated biphenyl (PCB) waste stream that was coded as P001: manifest 005476180 JJK – shipment date of 7/26/10; manifest 008193113 JJK – shipment date of 5/31/11; and manifest 005476318 JJK – shipment date of 11/15/10.

30. After the inspection, Respondent submitted correspondence to EPA dated August 15 and 29, 2011, which indicated that the PCB waste stream profile was being modified to include RCRA hazardous waste metal codes.

31. A generator who transports, or offers for transport, a hazardous waste for off-site treatment, storage or disposal, shall prepare a manifest, OMB control number 2050-0039, on EPA Form 8700-22, and if necessary, EPA Form 8700-22A, according to the instructions in the appendix to 40 C.F.R. part 262. See WAC NR § 662.020(1) [40 C.F.R. § 262.20(a)(1)].

32. The specific manifest requirements include, but are not limited to identifying hazardous materials by entering an “X” in Item 9a., entering the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 C.F.R. 172 in Item 9b., and entering applicable waste codes to describe each waste stream identified in Item 13.

33. During the inspection of records, the review of manifests indicated that there was one manifest (006641654 JJK – shipment date of 1/21/10) that included the hazardous waste stream aphis soil, which was not marked as a hazardous waste (lead and chromium per waste profile) for that waste stream. The line (Item 9b. on the manifest) for this waste stream was coded as environmentally hazardous and did not include any applicable RCRA metals waste codes (Item 13).

34. Also, the review of manifests and records received since the inspection indicates that there were three manifests that included a waste code error. All three following manifests included a PCB waste stream that was coded as P001: manifest 005476180 JJK – shipment date of 7/26/10; manifest 008193113 JJK – shipment date of 5/31/11; and manifest 005476318 JJK – shipment date of 11/15/10. The PCB waste stream also included RCRA metals. However, the manifests were coded incorrectly as P001 and did not include any applicable RCRA metals, and as a result, Respondent did not prepare uniform hazardous waste manifests correctly. Specifically, items 9a., 9b., and 13., on the manifests were either incorrectly completed or not completed. Respondent, therefore, violated the above-referenced generator manifest requirement.

35. Since the inspection, however, Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected (code change from P001 to PCB) manifests. The corrected manifests however, still did not indicate any waste codes that would correspond to any applicable RCRA hazardous waste metals that were in the waste stream.

36. A generator shall, for shipments of hazardous waste outside of Wisconsin, submit a copy of each manifest to the Wisconsin Department of Natural Resources within 30 days of receiving the signed copy from the designated facility WAC NR § 662.023(3).

37. During the inspection of records, the review of manifests indicated that there was one out-of-state- manifest (008174406 JJK shipment date 3/17/11) that was not sent to the WDNR within thirty days of receiving the signed copy from the designated facility.

38. During the inspection, Respondent's representative gave the WDNR inspector a copy of this manifest, at the time of inspection, to be entered into the WDNR manifest record database. That action was documented at the time of inspection.

39. A generator shall keep a copy of each manifest signed in accordance with WAC NR § 662.023(1) for 3 years or until the generator receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least 3 years from the date the waste was accepted by the initial transporter. See WAC NR § 662.040(1) [40 C.F.R. § 262.40(a)].

40. During the inspection of records, the review of manifests indicated that there was no TSD signed copy available for review on-site at the time of inspection for manifest 008193113 JJK – shipment date of 5/31/11.

41. Respondent submitted correspondence dated July 15, 2011, which documented that the TSD copy of the manifest was retained.

42. A generator of greater than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator of the designated facility to determine the status of the hazardous waste. See WAC NR § 662.042(1) [40 C.F.R. § 262.42(a)(1)].

43. During the inspection of records, the review of manifests indicated that there was no

TSD signed copy available for review on-site at the time of inspection for manifest 008193113 JJK – shipment date of 5/31/11. More than 35 days had passed since the shipment date on the manifest, and there was no contact made to determine the status of the hazardous waste.

44. Respondent submitted correspondence dated July 15, 2011, which documented that the TSD copy of the manifest was retained.

45. A generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed by determining if the hazardous waste meets the treatment standards in rule WAC NR §§ 668.40, 668.45, or 668.49 of the Wisconsin Administrative Code. This determination can be made either by testing the waste, or by using knowledge of the waste. Also, if the waste or contaminated soil does not meet the applicable treatment standard, then the generator shall send a one-time written notice to each treatment or storage facility receiving the waste with the initial waste shipment, and shall place a copy in the generator's file. See WAC NR §§ 668.07(1)(a) and (b) [40 C.F.R. § 268.7(a)(1)-(2) and (4)].

46. The inspection of manifests and records received since the inspection indicated that Respondent was manifesting the PCB hazardous waste RCRA metal soil waste stream incorrectly as P001 or PCB waste only. There was not a record or notice of a determination made on whether the PCB hazardous waste RCRA metal soil waste stream needed to be treated or not before it could be land disposed. Thus, there was no LDR notification available at the time of the inspection for the hazardous waste PCB waste stream that included RCRA hazardous waste metals.

47. Also, the inspection of manifests indicated that there was one manifest (006641654 JJK – shipment date of 1/21/10) that included hazardous waste aphis soil, which was not marked as a hazardous waste (lead and chromium per waste profile) for that waste stream. The line for

this waste stream was coded as environmentally hazardous. There was not a record or notice of a determination made on whether the hazardous waste aphis soil waste stream needed to be treated or not before it could be land disposed. Thus, there was no LDR notification available at the time of the inspection for the hazardous waste aphis soil stream.

48. The initial generator of a solid waste shall determine each EPA hazardous waste number (waste code) applicable to the waste to determine the applicable treatment standards. In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (subch. C of ch. NR § 661), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in sub. (2). If the generator determines that their waste displays a hazardous characteristic, and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM under NR § 668.42, Table 1, then the generator shall determine the underlying hazardous constituents, as defined by NR § 668.02(9), in the characteristic waste. See WAC NR §§ 668.09(1) [40 C.F.R. § 268.9(a)].

49. The inspection of manifests and records received since the inspection indicated that Respondent was manifesting the PCB hazardous waste RCRA metal soil waste stream incorrectly as P001 or PCB waste only. There was not a record or notice, available at the time of the inspection, of a determination made on whether the hazardous waste PCB hazardous waste RCRA metal soil waste stream had underlying hazardous constituents.

50. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator must clearly mark each container to identify its contents and must ensure that the date upon which each period of accumulation begins shall be clearly marked and visible for inspection on each container. See WAC NR § 662.034(1)(b) [40 C.F.R. § 262.34(a)(2)].

51. In addition, a generator must ensure that while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste". See WAC NR § 662.034(1)(c) [40 C.F.R. § 262.34(a)(3)].

52. During the inspection of Respondent's warehouse, in the Volatile HCl and Methanol hazardous waste storage area, the inspectors observed multiple pallets that had several boxes situated on them that contained hazardous waste HCl vial containers. None of the boxes or vials (40-ml vials) were marked with accumulation start dates nor were labeled with the words "Hazardous Waste."

53. Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected procedures and management of hazardous waste containers in this hazardous waste storage area.

54. Additionally, during the inspection of the same hazardous waste storage area, the inspectors observed approximately forty boxes on the shelves that contained hazardous waste methanol/RCRA metal contaminated soils in 40-ml vial containers. None of the boxes or vials were marked with accumulation start dates nor were labeled with the words "Hazardous Waste." These boxes did have monthly dates marked on them that illustrated the time frame when the samples were received at the facility. The labels on the actual hazardous waste vial containers inside of the boxes had dates on them when they were received and tested. These dates corresponded with the month dates on the boxes in which each hazardous waste vial was situated in. Thus, there were no labels or hazardous waste accumulation dates marked on these containers.

55. Since the inspection, Respondent submitted correspondence dated August 4 and 8, 2011, which included documentation of corrected procedures and management of hazardous

waste containers in this hazardous waste storage area, and documentation that the hazardous waste in the boxes, was sent off-site for disposal.

56. Also, during the inspection of an adjacent area in the Warehouse, the inspectors observed approximately thirty boxes that contained HCl hazardous waste vial containers. These samples were marked as received on May 2011. There were no labels or accumulation start dates marked on the boxes or the hazardous waste vial containers.

57. Since the inspection, Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected procedures and management of hazardous waste containers in this hazardous waste storage area.

58. Also, during the inspection of the Hazardous Waste Room, the inspectors observed one cart that contained several waste PCB and flammable liquid hazardous waste vials that were brought into the room on the day of the inspection. The waste samples were not labeled and were not marked with accumulation start dates. There was one 5-gallon pail and another container, situated on spill containment pallets, which contained punctured flammable liquid hazardous waste vials. The 5-gallon pail was not labeled and was not marked with an accumulation start date. The other hazardous waste container was not marked with an accumulation start date. These two containers were brought into the room on the day of the inspection.

59. Since the inspection, however, Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected procedures and management of hazardous waste containers in this hazardous waste storage area.

60. Also, during the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon container that contained lachat (sulfuric acid waste) hazardous waste. The container was labeled as "Lachat Waste" but not as "Hazardous Waste." There was one 5-gallon

container that contained punctured hazardous waste 2-ml vials as stated by Respondent's representative. The container was not labeled and was not dated. There were three 2 ½-liter containers that contained hazardous waste acid as stated by Respondent's representative. The containers were not labeled as "Hazardous Waste."

61. Since the inspection, Respondent submitted correspondence dated August 4, 2011, which included documentation of corrected procedures and management of hazardous waste containers in this hazardous waste storage area.

62. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure that containers holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste. See WAC NR § 662.034(1)(a)(1) [40 C.F.R. § 262.34(a)(1)(i)]; WAC NR § 665.0173(1) [40 C.F.R. § 265.173(a)]. This is also a requirement applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0173(1) [40 C.F.R. § 264.173(a)].

63. During the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon pail and another container, situated on spill containment pallets, which contained punctured flammable liquid hazardous waste vials. The 5-gallon pail was open. There was no waste being added or removed from the container at the time of inspection. The other hazardous waste container was also open. There was no waste being added or removed from the container at the time of inspection.

64. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected hazardous waste container management.

65. Also, during the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon container that contained punctured hazardous waste 2-ml vials as stated. The

container was open. There was no waste being added or removed from the container at the time of inspection.

66. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected hazardous waste container management.

67. A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in WAC NR § 661.33 (5) 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 an operating license or interim license and without complying with sub. (1) provided the generator complies with WAC NR § 665.0171, 665.0172 and 665.0173(1) - specifically, a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste; and provided the generator marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. See WAC NR § 662.034(3)(a)1. and 2. [40 C.F.R. § 262.34(c)(1)(i) and (ii)].

68. During the inspection of the Volatiles Prep Area, the inspectors observed a satellite accumulation area (SAA) that consisted of one 1-liter container, inside an open fume hood, that contained hazardous waste methanol. The container was labeled only as "Waste", and was open, and there was no waste being added or removed from the container at the time of inspection.

69. During the inspection facility personnel closed the container and a picture was taken to document that action.

70. During the inspection of the Volatile Area Lab, the inspectors observed one SAA that consisted of one 1-liter container (inside an open fume hood) that contained hazardous waste methanol vials. Neither the container nor the vials were labeled and were open. There was no

waste being added or removed from the container at the time of inspection.

71. During the inspection facility personnel closed the container and a picture was taken to document that action.

72. The same SAA referenced in Paragraph 63 also consisted of one 2-liter container (inside an open fume hood) that contained hazardous waste flammable liquid. The container was labeled only as "Waste." The same SAA also consisted of seventeen 1-liter containers (under the fume hood) that contained hazardous waste methanol. All seventeen containers were labeled only as "Waste." The same SAA furthermore consisted of one 2-liter container (under the fume hood) that contained hazardous waste flammable liquid vials. Neither the container nor the vials were labeled.

73. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

74. During the inspection at the Metals Prep area, the inspectors observed one SAA that consisted of one ½-liter container (inside an open fume hood) that contained spent hazardous waste nitric acid and HCl peroxide. The container was labeled only as "Waste" and was open. There was no waste being added or removed from the container at the time of inspection.

75. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

76. During the inspection of the Metals Lab, the inspectors observed one SAA that consisted of one 1-liter container (inside an open fume hood) that contained spent hazardous waste flammable liquid. The container was not labeled and was open. There was no waste being added or removed from the container at the time of inspection.

77. Respondent submitted correspondence dated August 4, 2011, that included

documentation of corrected SAA hazardous waste container management.

78. During the inspection of the Wet Chem Lab, the inspectors observed two separate SAA. The first SAA consisted of one 15-gallon container that contained hazardous waste sulfuric acid (lachat waste). The container was not labeled. The second SAA consisted of two 4-liter containers that contained flammable ammonia and phenolic hazardous waste. Both containers were both open. There was no waste being added or removed from the containers at the time of inspection.

79. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

80. During the inspection of the SVOA Prep area, the inspectors observed one SAA that consisted of two 4-liter containers that contained methylene chloride/water hazardous waste. Both of the containers were not labeled.

81. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

82. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 4-liter container that was labeled as "Waste CH₂ CL₂" and was open. There was no waste being added or removed from the container at the time of inspection.

83. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

84. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 1-gallon container that was labeled as "Hazardous Waste" and "Methylene Chloride/Vials" and was open. There was no waste being added or removed from the container at the time of inspection.

85. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

86. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 10-gallon container that contained hazardous waste methylene chloride. The container was not labeled as waste.

87. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

88. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 10-gallon container that contained hazardous waste methylene chloride. The container was not labeled as waste and was open.

89. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

90. During the inspection of the SVOA Lab, the inspectors observed one SAA that consisted of one 10-gallon container that contained hazardous waste methylene chloride. The container was not labeled as waste and was open. There was no waste being added or removed from the container at the time of inspection.

91. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

92. During the inspection of an adjacent area to the Low Level Mercury Room, the inspectors observed one SAA that consisted of one ½-gallon container that contained hazardous waste acid. The container was not labeled and was open.

93. Respondent submitted correspondence dated August 4, 2011, that included documentation of corrected SAA hazardous waste container management.

94. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0035 [40 C.F.R. § 265.35]. These are also requirements applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0035 [40 C.F.R. § 264.35].

95. During the inspection of the warehouse in the Volatile HCl and Methanol hazardous waste storage area and the Hazardous Waste Room, the inspectors observed that the aisle space was insufficient in both of the hazardous waste storage areas.

96. Respondent submitted correspondence dated August 4, 2011, that included documentation of sufficient aisle space in the above-referenced areas.

97. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall attempt to make all of the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations: arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes; and agreements with state emergency response teams, emergency response contractors and equipment suppliers. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0037(1)(a) and (c) [40 C.F.R. § 265.37(a)(1) and (3)]. These are also requirements applicable to owners and

operators of hazardous waste storage facilities under WAC NR § 664.0037(1)(a) and (c) [40 C.F.R. § 264.37(a)(1) and (3)].

98. During the inspection of records, there was no documentation provided that indicated an emergency response company had been familiarized with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes. Also, there was no documentation provided that indicated an emergency response agreement was in place for the facility.

99. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure its contingency plan describes the arrangements agreed to by local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services, pursuant to NR § 665.0037. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0052(3) [40 C.F.R. § 265.52(c)]. These are also requirements applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0052(3) [40 C.F.R. § 264.52(c)].

100. During the inspection of records, the review of the contingency plan indicated that there was no documentation in the plan that indicated an emergency response agreement was in place for the facility. There was no emergency response team/company identified in the plan.

101. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure its contingency plan is submitted to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0053(2) [40 C.F.R. § 265.53(b)]. These are also

requirements applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0053(2) [40 C.F.R. § 264.53(b)].

102. During the inspection of records and the review of the contingency plan, there was no documentation provided that indicated an emergency response company had received the facility's contingency plan. Also, there was no emergency response team/company identified in the plan.

103. A generator who accumulates hazardous waste on-site in containers or tanks for more than 90 days is an operator of a hazardous waste storage facility and is subject to the license requirement. See WAC NR § 662.034(2) [40 C.F.R. § 262.34(b)]. This is also a license requirement of owners and operators of hazardous waste storage facilities under WAC NR Part 664, WAC NR §§ 670.001, 670.010, and 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

104. During the inspection of the warehouse in the Volatile HCl and Methanol hazardous waste storage area, the inspectors observed on the shelves, that there were approximately forty boxes that contained hazardous waste methanol/RCRA metal contaminated soils in 40-ml vial and jar containers. These boxes did have monthly dates marked on them that illustrated the time frame when the samples were received at the facility. The labels on the actual hazardous waste vial and jar containers inside of the boxes had dates on them when they were received and tested. These dates corresponded with the month dates on the boxes in which each hazardous waste vial and jar was situated in. Respondent's representative stated that a maximum of one hundred days would have passed from the time the samples were received at the facility to when they would be made available for hazardous waste storage and disposal. The following observed boxes that contained hazardous waste vial and jar containers ranged in marked monthly dates from: (1) box

- June to July 2010; (1) box – July 2010; (1) box – July to August 2010; (3) boxes – August 2010; (2) boxes – August to September 2010; (1) box – September 2010; (7) boxes – October 2010. Allowing for the one hundred day processing period for the samples before being determined hazardous waste by the facility, these sixteen (16) boxes that contained hazardous waste vial and jar containers still were in storage for at least six months past the allowed 90-day limit without a hazardous waste storage license.

105. Respondent submitted correspondence dated August 8, 2011, which included documentation that the hazardous waste in the sixteen (16) boxes, was sent off-site for disposal.

106. Also, the following observed boxes that contained hazardous waste vial and jar containers ranged in marked monthly dates from: (1) box – October to November 2010; (7) boxes – November 2010; (2) boxes – November to December 2010; (5) boxes – December 2010; and (1) box – November 2010 to February 2011. Allowing for the one hundred day processing period for the samples before being determined hazardous waste by the facility, these sixteen (16) boxes that contained hazardous waste vial and jar containers still were in storage for at least two months past the allowed 90-day limit without a hazardous waste storage license.

107. Respondent submitted correspondence dated August 8, 2011, which included documentation that the hazardous waste in the sixteen (16) boxes was sent off-site for disposal.

108. During the inspection of the Hazardous Waste Room, the inspectors observed three 2 ½-liter containers that contained hazardous waste acid. The box that the containers were situated in was dated 2/15/11. The three hazardous waste acid containers were in storage for approximately two months past the allowed 90-day limit without a hazardous waste storage license.

109. Respondent submitted correspondence dated October 14, 2011, which included documentation that the hazardous waste in the three 2 ½-liter containers, was sent off-site for disposal.

110. A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps. The containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. See WAC NR § 673.13(4)(a) [40 C.F.R. § 273.13(d)(1)].

111. Also, a small quantity handler of universal waste shall ensure that each lamp or a container or package in which the lamps are contained shall be labeled or marked clearly with the phrase “Universal Waste—Lamps”, “Waste Lamps” or “Used Lamps”. See WAC NR § 673.14(5) [40 C.F.R. § 273.14(e)].

112. During the inspection of the Maintenance Area, the inspectors observed two cardboard fiber containers that contained spent fluorescent bulbs. Both containers were not labeled and were open.

113. Respondent submitted correspondence dated August 5, 2011, that included documentation of how the spent bulbs were managed.

114. A generator who accumulates hazardous waste on-site for more than 90 days, and who does not meet the conditions for a storage license exemption, set forth in WAC NR § 662.034(1)-(3) [40 C.F.R. § 262.34(a)-(c)], is an operator of a hazardous waste storage facility, is subject to storage facility requirements, and is required to apply for and obtain a hazardous waste storage license. See WAC NR Part 664, WAC NR §§ 670.001, 670.010, and 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a)-(d), 270.13].

115. Respondent operated a hazardous waste storage facility and was required to apply for and to obtain a hazardous waste storage license. Respondent did not apply for or obtain a hazardous waste storage license.

Count 1: Failure To Determine Whether A Waste Is Hazardous

116. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

117. A person who generates a solid waste shall determine if that waste is a hazardous waste. See WAC NR § 662.011 [40 C.F.R. § 262.11].

118. The review of Respondent's waste determinations/profiles indicated that there was no profile or waste determination available for the waste (one ½-gallon container that contained sample waste) that was observed in the Low Level Mercury Room and inadequate waste determination/profile for the PCB hazardous waste RCRA metal soil waste stream.

119. Therefore, Respondent's failure to determine whether the above referenced waste was a hazardous waste is a violation of the generator waste determination requirement of WAC NR § 662.011 [40 C.F.R. § 262.11].

Count 2: Failure To Complete Manifests

120. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

121. A generator who transports, or offers for transport, a hazardous waste for off-site treatment, storage or disposal, shall prepare a manifest, OMB control number 2050-0039, on EPA Form 8700-22, and if necessary EPA Form 8700-22A, according to the instructions in the appendix to 40 C.F.R. Part 262. See WAC NR § 662.020(1) [40 C.F.R. § 262.20(a)(1)].

122. The inspection of records and the review of manifests indicated that there was one

manifest 006641654 JJK – shipment date of 1/21/10 that included the hazardous waste stream aphis soil, which was not marked as a hazardous waste (lead and chromium per waste profile) for that waste stream. The line (Item 9b. on the manifest) for this waste stream was coded as environmentally hazardous and did not include any applicable RCRA metals waste codes (Item 13).

123. In addition, the inspection of manifests and records received since the inspection indicated that there were three manifests that included a waste code error. All three following manifests included a PCB waste stream that was coded as P001: manifest 005476180 JJK – shipment date of 7/26/10; manifest 008193113 JJK – shipment date of 5/31/11; and manifest 005476318 JJK – shipment date of 11/15/10. The PCB waste stream also included RCRA metals. However, the manifests were coded incorrectly as P001 and did not include any applicable RCRA metals, and as a result, Respondent did not prepare uniform hazardous waste manifests correctly. Specifically, items 9a., 9b., and 13., on the manifests were either incorrectly completed or not completed.

124. Respondent's failure to complete the above referenced manifests are a violation of the requirements of WAC NR § 662.020(1) [40 C.F.R. § 262.20(a)(1)].

Count 3: Failure to Submit A Copy of Manifests to The Department.

125. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

126. A generator shall, for shipments of hazardous waste outside of Wisconsin, submit a copy of each manifest to the department within 30 days of receiving the signed copy from the designated facility. See WAC NR § 662.023(3).

127. The review of manifests indicated that there was one out-of-state- manifest

008174406 JJK (shipment date 3/17/11) that was not sent to the WDNR within thirty days of receiving the signed copy from the designated facility.

128. Therefore, the Respondent's failure to submit a copy of the Manifest violated WAC NR § 662.023(3).

Count 4: Failure to Retain Required Records

129. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

130. A generator shall keep a copy of each manifest signed in accordance with WAC NR § 662.023(1) for 3 years or until the generator receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least 3 years from the date the waste was accepted by the initial transporter. See WAC NR § 662.040(1) [40 C.F.R. § 262.40(a)].

131. The review of manifests indicated that there was no TSD signed copy available for review on-site at the time of inspection for manifest 008193113 JJK – shipment date of 5/31/11.

132. The failure to retain a copy of the above referenced manifest is a violation of WAC NR § 662.040(1) [40 C.F.R. § 262.40(a)].

Count 5: Failure To Determine Hazardous Waste Status

133. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

134. A generator of greater than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator of the designated

facility to determine the status of the hazardous waste. See WAC NR § 662.042(1) [40 C.F.R. § 262.42(a)(1)].

135. The review of manifests indicated that there was no TSD signed copy available for review on-site at the time of inspection for manifest 008193113 JJK – shipment date of 5/31/11. More than 35 days had passed since the shipment date on the manifest, and there was no contact made to determine the status of the hazardous waste.

136. Therefore, the Respondent violated the above-referenced generator hazardous waste status determination requirement of WAC NR § 662.042(1) [40 C.F.R. § 262.42(a)(1)].

Count 6: Failure to Retain Required Records

137. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

138. A generator of a 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 treatment standards in rule WAC NR §§ 668.40, 668.45, or 668.49. This determination can be made either by testing the waste or by using knowledge of the waste. Also, if the waste or contaminated soil does not meet the applicable treatment standard, then the generator shall send a one-time written notice to each treatment or storage facility receiving the waste with the initial waste shipment, and shall place a copy in the generator's file. See WAC NR §§ 668.07(1)(a) and (b) [40 C.F.R. § 268.7(a)(1)-(2) and (4)].

139. The inspection of manifests and records received since the inspection indicated that Respondent was manifesting the PCB hazardous waste RCRA metal soil waste stream incorrectly as P001 or PCB waste only. There was not a record or notice of a determination made on whether the PCB hazardous waste RCRA metal soil waste stream needed to be treated or not

before it could be land disposed. Thus, there was no LDR notification available at the time of the inspection for the hazardous waste PCB waste stream that included RCRA hazardous waste metals.

140. In addition, the inspection of manifests indicated that there was one manifest 006641654 JJK – shipment date of 1/21/10 that included hazardous waste aphis soil, which was not marked as a hazardous waste (lead and chromium per waste profile) for that waste stream. The line for this waste stream was coded as environmentally hazardous. There was no record or notice of a determination made on whether the hazardous waste aphis soil waste stream needed to be treated before it could be land disposed. Thus, there was no LDR notification available at the time of the inspection for the hazardous waste aphis soil stream.

141. Therefore, Respondent violated the land disposal treatment determination recordkeeping requirement of WAC NR §§ 668.07(1)(a) and (b) [40 C.F.R. § 268.7(a)(1)-(2) and (4)].

Count 7: Failure to Retain Required Records

142. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

143. The initial generator of a solid waste shall determine each EPA hazardous waste number (waste code) applicable to the waste to determine the applicable treatment standards. In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (subch. C of ch. NR § 661), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in sub. (2). If the generator determines that their waste displays a hazardous characteristic, and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM under NR § 668.42, Table

1, then the generator shall determine the underlying hazardous constituents, as defined by NR § 668.02(9), in the characteristic waste. See WAC NR §§ 668.09(1) [40 C.F.R. § 268.9(a)].

144. The inspection of manifests and records received since the inspection indicated that Respondent was manifesting the PCB hazardous waste RCRA metal soil waste stream incorrectly as P001 or PCB waste only. There was no record or notice available at the time of the inspection of a determination made on whether the hazardous waste PCB hazardous waste RCRA metal soil waste stream had underlying hazardous constituents.

145. Therefore Respondent violated the land disposal treatment determination recordkeeping requirement of WAC NR §§ 668.09(1) [40 C.F.R. § 268.9(a)].

Count 8: Violations of Requirements for a License Exemption.

146. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

147. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator must clearly mark each container to identify its contents and must ensure that the date upon which each period of accumulation begins shall be clearly marked and visible for inspection on each container. See WAC NR § 662.034(1)(b) [40 C.F.R. § 262.34(a)(2)].

148. In addition, a generator must ensure that while being accumulated onsite, each container and tank is labeled or marked clearly with the words “Hazardous Waste”. See WAC NR § 662.034(1)(c) [40 C.F.R. § 262.34(a)(3)].

149. During the inspection of the Volatile HCl and Methanol hazardous waste storage area in the warehouse, the inspectors observed multiple pallets that had several boxes situated on them that contained hazardous waste HCl vial containers. None of the boxes or vials (40-ml

vials) were marked with accumulation start dates nor labeled with the words “Hazardous Waste.” Respondent, therefore, violated the above-referenced conditions for a license exemption.

150. Also, during the inspection of the same hazardous waste storage area, the inspectors observed approximately forty boxes on the shelves that contained hazardous waste methanol/RCRA metal contaminated soils in 40-ml vial containers. None of the boxes or vials were marked with accumulation start dates nor labeled with the words “Hazardous Waste.” These boxes did have monthly dates marked on them that illustrated the time frame when the samples were received at the facility. The labels on the actual hazardous waste vial containers inside of the boxes had dates on them when they were received and tested. These dates corresponded with the month dates on the boxes in which each hazardous waste vial was situated. Thus, there were no labels or hazardous waste accumulation dates marked on these containers.

151. Also, during the inspection of an adjacent area in the warehouse, the inspectors observed approximately thirty boxes that contained HCl hazardous waste vial containers situated on some steps. The received date was marked May 2011. There were no labels or accumulation start dates marked on the boxes or the hazardous waste vial containers.

152. Also, during the inspection of the Hazardous Waste Room, the inspectors observed one cart that contained several waste PCB and flammable liquid hazardous waste vials that were brought into the room on this day of inspection. The waste samples were not labeled and were not marked with accumulation start dates. There was one 5-gallon pail and another container, situated on spill containment pallets, which contained punctured flammable liquid hazardous waste vials. The 5-gallon pail was not labeled and was not marked with an accumulation start date. The other hazardous waste container was not marked with an accumulation start date.

These two containers were brought into the room on this day of inspection.

153. Furthermore, during the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon container that contained lachat (sulfuric acid waste) hazardous waste. The container was labeled as "Lachat Waste" but not as "Hazardous Waste." There was one 5-gallon container that contained punctured hazardous waste 2-ml vials. The container was not labeled, and was not dated. There were three 2 ½-liter containers that contained hazardous waste acid. The containers were not labeled as "Hazardous Waste."

154. Therefore, Respondent violated the conditions for a license exemption under WAC NR § 662.034(1)(b) [40 C.F.R. § 262.34(a)(2)] and WAC NR § 662.034(1)(c) [40 C.F.R. § 262.34(a)(3)].

Count 9: Violations of Requirements for a License Exemption.

155. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

156. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure that containers holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste. See WAC NR § 662.034(1)(a)(1) [40 C.F.R. § 262.34(a)(1)(i)]; WAC NR § 665.0173(1) [40 C.F.R. § 265.173(a)]. This is also a requirement applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0173(1) [40 C.F.R. § 264.173(a)].

157. During the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon pail and another container, situated on spill containment pallets, which contained punctured flammable liquid hazardous waste vials. The 5-gallon pail was open. There was no waste being added or removed from the container at the time of inspection. The other hazardous

waste container was also open. There was no waste being added or removed from the container at the time of inspection.

158. In addition, during the inspection of the Hazardous Waste Room, the inspectors observed one 5-gallon container that contained punctured hazardous waste 2-ml vials. The container was open. There was no waste being added or removed from the container at the time of inspection.

159. Therefore, Respondent failed to comply with the conditions for a license exemption, and violated the above-referenced storage facility container management requirement of WAC NR § 662.034(1)(a)(1) [40 C.F.R. § 262.34(a)(1)(i)]; WAC NR § 665.0173(1) [40 C.F.R. § 265.173(a)] and WAC NR § 664.0173(1) [40 C.F.R. § 264.173(a)].

Count 10: Violations of Requirements for a License Exemption.

160. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

161. A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in NR § 661.33 (5) 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 an operating license or interim license and without complying with NR § 662.034 provided (1) the generator complies with NR §§ 665.0171, 665.0172 and 665.0173(1) and (2) the generator marks the containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers. See WAC NR § 662.034(3)(a)1 and 2 [40 C.F.R. § 262.34(c)(1)(i) and (ii)].

162. During the inspection of the Volatiles Prep Area, the inspectors observed a satellite accumulation area (SAA) that consisted of one 1-liter container, inside an open fume hood, that

contained hazardous waste methanol as stated. The container was labeled only as "Waste" and was open, and there was no waste being added or removed from the container at the time of inspection.

163. During the inspection of the Volatile Area Lab, the inspectors observed one SAA that included of one 1-liter container (inside an open fume hood) of hazardous waste methanol vials. Neither the container nor the vials were labeled and they were open. There was no waste being added or removed from the container at the time of inspection. Respondent, therefore, failed to comply with the above-referenced conditions for a license exemption. The same SAA also included of one 2-liter container (inside an open fume hood) of hazardous waste flammable liquid. The container was labeled only as "Waste." The same SAA also included seventeen 1-liter containers (under the fume hood) of hazardous waste methanol. All seventeen containers were labeled only as "Waste." The same SAA further included of one 2-liter container (under the fume hood) that contained hazardous waste flammable liquid vials. Neither the container nor the vials were labeled.

164. During the inspection at the Metals Prep area, the inspectors observed one SAA that consisted of one ½-liter container (inside an open fume hood) that contained spent hazardous waste nitric acid and HCl peroxide. The container was labeled only as "Waste" and was open. There was no waste being added or removed from the container at the time of inspection.

165. During the inspection of the Metals Lab, the inspectors observed one SAA that included of one 1-liter container (inside an open fume hood) of spent hazardous waste flammable liquid. The container was not labeled and was open. There was no waste being added or removed from the container at the time of inspection.

166. During the inspection of the Wet Chem Lab, the inspectors observed two separate

SAAs. The first SAA consisted of one 15-gallon container of hazardous waste sulfuric acid (lachat waste). The container was not labeled. The second SAA consisted of two 4-liter containers that contained flammable ammonia and phenolic hazardous waste. Both containers were both open. There was no waste being added or removed from the containers at the time of inspection.

167. During the inspection of the SVOA Prep area, the inspectors observed one SAA that consisted of two 4-liter containers that contained methylene chloride/water hazardous waste. Both of the containers were not labeled.

168. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 4-liter container that was labeled as "Waste CH₂ CL₂" and was open. There was no waste being added or removed from the container at the time of inspection.

169. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 4-liter container that was labeled as "Waste CH₂ CL₂" and was open. There was no waste being added or removed from the container at the time of inspection.

170. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 1-gallon container that was labeled as "Hazardous Waste" and "Methylene Chloride/Vials" and was open. There was no waste being added or removed from the container at the time of inspection.

171. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 10-gallon container that contained hazardous waste methylene chloride. The container was not labeled as waste.

172. During the inspection of an adjacent area, the inspectors observed one SAA that consisted of one 10-gallon container that contained hazardous waste methylene chloride. The

container was not labeled as waste and was open. There was no waste being added or removed from the container at the time of inspection.

173. During the inspection of the SVOA Lab, the inspectors observed one SAA that consisted of one 10-gallon container of hazardous waste methylene chloride. The container was not labeled as waste and was open. There was no waste being added or removed from the container at the time of inspection.

174. During the inspection of an adjacent area to the Low Level Mercury Room, the inspectors observed one SAA that consisted of one ½-gallon container of hazardous waste acid. The container was not labeled and was open.

175. Therefore, Respondent failed to comply with the conditions for a license exemption of WAC NR § 662.034(3)(a)1. and 2. [40 C.F.R. § 262.34(c)(1)(i) and (ii)].

Count 11: Violations of Requirements for a License Exemption.

176. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

177. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0035 [40 C.F.R. § 265.35]. These are also requirements applicable to owners and operators of hazardous waste storage facilities under WAC NR § 664.0035 [40 C.F.R. § 264.35].

178. During the inspection of the warehouse, in the Volatile HCl and Methanol

hazardous waste storage area and the Hazardous Waste Room, the inspectors observed that the aisle space was insufficient in both of the hazardous waste storage areas.

179. Therefore, Respondent failed to comply with the condition for a license exemption, and violated the above-referenced storage facility aisle space requirement of WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0035 [40 C.F.R. § 265.35] and WAC NR § 664.0035 [40 C.F.R. § 264.35].

Count 12: Violations of Requirements for a License Exemption.

180. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

181. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall attempt to make all of the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations: arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility; properties of hazardous waste handled at the facility and associated hazards; places where facility personnel would normally be working; entrances to roads inside the facility and possible evacuation route, and agreements with state emergency response teams, emergency response contractors and equipment suppliers. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0037(1)(a) and (c) [40 C.F.R. § 265.37(a)(1) and (3)]. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0037(1)(a) and (c) [40 C.F.R. § 265.37(a)(1) and (3)].

182. During the inspection of records, there was no documentation provided that indicated an emergency response company had been familiarized with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility

personnel would normally be working, entrances to roads inside the facility and possible evacuation routes. Also, there was no documentation provided that indicated an emergency response agreement was in place for the facility.

183. Therefore, Respondents failed to comply with the conditions for a license exemption, and violated the above-referenced storage facility arrangement with local authorities requirement of WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0037(1)(a) and (c) [40 C.F.R. § 265.37(a)(1) and (3)].

Count 13: Violations of Requirements for a License Exemption.

184. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

185. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure its contingency plan describes the arrangements agreed to by local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services, pursuant to NR § 665.0037. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0052(3) [40 C.F.R. § 265.52(c)] and WAC NR § 664.0052(3) [40 C.F.R. § 264.52(c)].

186. During the inspection of records, the review of the contingency plan indicated that there was no documentation in the plan that indicated an emergency response agreement was in place for the facility. There was no emergency response team/company identified in the plan.

187. Therefore, Respondent failed to comply with the conditions for a license exemption, and violated the storage facility contingency plan content requirement of WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0052(3) [40 C.F.R. § 265.52(c)] and WAC NR § 664.0052(3) [40 C.F.R. § 264.52(c)].

Count 14: Violations of Requirements for a License Exemption.

188. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

189. In order to accumulate hazardous waste on-site for 90 days or less without an operating license or interim license, a generator shall ensure its contingency plan is submitted to all local police departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services. See WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0053(2) [40 C.F.R. § 265.53(b)] and WAC NR § 664.0053(2) [40 C.F.R. § 264.53(b)].

190. During the inspection of records and the review of the contingency plan, there was no documentation provided that indicated an emergency response company had received the facility's contingency plan. Also, there was no emergency response team/company identified in the plan.

191. Therefore, Respondent failed to comply with the conditions for a license exemption, and violated the above-referenced storage facility contingency plan copy distribution requirement of WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0053(2) [40 C.F.R. § 265.53(b)] and WAC NR § 664.0053(2) [40 C.F.R. § 264.53(b)].

Count 15: Failure to Apply for and Obtain a License

192. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

193. During the inspection of the Warehouse, in the Volatile HCl and Methanol hazardous waste storage area, the inspectors observed that there were approximately forty boxes on the shelves that contained hazardous waste methanol/RCRA metal contaminated soils in 40-

ml vial and jar containers. These boxes did have monthly dates marked on them that illustrated the time frame when the samples were received at the facility. The labels on the actual hazardous waste vial and jar containers inside of the boxes had dates on them when they were received and tested. These dates corresponded with the month dates on the boxes in which each hazardous waste vial and jar was situated in. Respondents representative stated that a maximum of one hundred days would have passed from the time the samples were received at the facility to when they would be made available for hazardous waste storage and disposal. The following observed boxes that contained hazardous waste vial and jar containers ranged in marked monthly dates from: (1) box - June to July 2010; (1) box – July 2010; (1) box – July to August 2010; (3) boxes – August 2010; (2) boxes – August to September 2010; (1) box – September 2010; (7) boxes – October 2010. Allowing for the one hundred day processing period for the samples before being determined hazardous waste by the facility, these sixteen (16) boxes that contained hazardous waste vial and jar containers still were in storage for at least six months past the allowed 90-day limit without a hazardous waste storage license.

194. In addition, the following boxes that contained hazardous waste vial and jar containers ranged in marked monthly dates from: (1) box – October to November 2010; (7) boxes – November 2010; (2) boxes – November to December 2010; (5) boxes – December 2010; and (1) box – November 2010 to February 2011. Allowing for the one hundred day processing period for the samples before being determined hazardous waste by the facility, these sixteen (16) boxes that contained hazardous waste vial and jar containers still were in storage for at least two months past the allowed 90-day limit without a hazardous waste storage license.

195. Furthermore, during the inspection of the Hazardous Waste Room, the inspectors observed three 2 ½-liter containers that contained hazardous waste acid. The box that the

containers were situated in was dated 2/15/11. The three hazardous waste acid containers were in storage for approximately two months past the allowed 90-day limit without a hazardous waste storage license.

196. Therefore, Respondent violated the storage facility requirement of WAC NR § 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)]; WAC NR § 665.0053(2) [40 C.F.R. § 265.53(b)] and WAC NR § 664.0053(2) [40 C.F.R. § 264.53(b)].

Count 16: Violation of the Universal Waste Requirement

197. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

198. A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps. The containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions. See WAC NR § 673.13(4)(a) [40 C.F.R. § 273.13(d)(1)].

199. Also, a small quantity handler of universal waste shall ensure that each lamp or a container or package in which the lamps are contained shall be labeled or marked clearly with the phrase “Universal Waste—Lamps”, “Waste Lamps” or “Used Lamps”. See WAC NR § 673.14(5) [40 C.F.R. § 273.14(e)].

200. During the inspection of the Maintenance area, the inspectors observed two cardboard fiber containers that contained spent fluorescent bulbs. Both containers were not labeled and were open.

201. Therefore, Respondent violated the universal waste requirement of WAC NR § 673.13(4)(a) [40 C.F.R. § 273.13(d)(1)] and WAC NR § 673.14(5) [40 C.F.R. § 273.14(e)].

Count 17: Failure to Apply for and Obtain a Hazardous Waste Storage License.

202. Complainant incorporates paragraphs 1 through 114 of this Complaint as though set forth in this paragraph.

203. A generator who accumulates hazardous waste on-site for more than 90 days, and who does not meet the conditions for a storage license exemption, set forth in WAC NR § 662.034(1)-(3) [40 C.F.R. § 262.34(a)-(c)], is an operator of a hazardous waste storage facility, is subject to storage facility requirements, and is required to apply for and obtain a hazardous waste storage license. See WAC NR Part 664, WAC NR §§ 670.001, 670.010, and 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a)-(d), 270.13].

204. Respondent failed to comply with the conditions for a license exemption and because it stored hazardous waste on-site for more than 90 days, it operated a hazardous waste storage facility and was required to apply for and to obtain a hazardous waste storage license. Respondent did not apply for or obtain a hazardous waste storage license.

205. Respondent's failure to apply for and to obtain a hazardous waste storage license violated the licensing requirements for a RCRA storage facility of WAC NR Part 664, WAC NR §§ 670.001, 670.010, and 670.013 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a)-(d), 270.13].

PENALTY

206. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$60,133. In determining the penalty amount, Complainant took into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

207. Within 30 days after the effective date of this CAFO, Respondent must pay a \$60,133 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

or for checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state the case title and the docket number of this CAFO.

For electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case title and the docket number of this CAFO.

For ACH payment, also known as REX or remittance express, by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

For on-line payment. To pay on line go to:

WWW.PAY.GOV

Use the Search Public Forms option and enter 'sfo 1.1' in the search field.
Open form and complete required fields.

208. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Bryan Gangwisch (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jose C. de Leon (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

208. This civil penalty is not deductible for federal tax purposes.

209. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

210. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment

was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

211. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

212. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

213. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

214. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

215. The terms of this CAFO bind Respondent, its successors, and assigns.

216. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

217. Each party agrees to bear its own costs and attorney's fees in this action.

218. This CAFO constitutes the entire agreement between the parties.

Pace Analytical Services, Inc., Respondent


Date



Steve A. Vanderboom
President
Pace Analytical Services, Inc.

United States Environmental Protection Agency, Complainant

September 27, 2013
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Pace Analytical Services, Inc.
Docket No. RCRA-05-2013-0016

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-27-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



CASE NAME: PACE ANALYTICAL SERVICES, INC.
DOCKET NO: RCRA-05-2013-0016

CERTIFICATE OF SERVICE

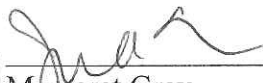
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604 -3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Steve A. Vanderboom
President
Pace Analytical Services, Inc.
1800 Elm Street, SE
Minneapolis, MN 55414

Certified Mail Receipt # 7009 1680 0000 7663 6773

Dated: September 30, 2013

for 
Margaret Gray
Administrative Program Assistant
U.S. Environmental Protection Agency



Region V
RCRA Branch
Land and Chemicals Division LR-8J
77 W. Jackson Blvd, Chicago, IL 60604-3590