



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

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U.S. ENVIRONMENTAL PROTECTION AGENCY
PHILADELPHIA, PA

In the Matter of)	U.S. EPA Docket No.: CERCLA-03-2016-0168
)	
Shannopin Materials, LLC)	
103 Corporate Drive, Suite 102)	
Morgantown, WV 26501)	
)	
and)	
)	
Mepco Intermediate)	
Holdings, LLC)	
103 Corporate Drive, Suite 102)	
Morgantown, WV 26501)	
)	
Respondents.)	
)	Proceedings Pursuant to Sections 103 and
Shannopin Dock)	109 of the Comprehensive Environmental
Poland Mines, PA)	Response, Compensation and Liability
Lat/Long: 39.771875/ -79.935630)	Act, 42 U.S.C. §§ 9603 and 9609
)	
)	
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”). Further, this Consent Agreement is proposed and entered into under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondents admit to the jurisdictional allegations in this Consent Agreement and agree not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondents neither admit nor deny the following factual allegations and conclusions of law, but expressly waive their rights to contest said allegations.

FINDINGS OF FACT

5. Shannopin Materials, LLC (“Shannopin”) is a subsidiary of Mepco Intermediate Holdings, LLC (“Mepco”) (collectively, “Respondents”). Respondents’ principle place of business is located at 103 Corporate Drive, Suite 102, Morgantown, WV 26501.
6. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. §§ 302.3.
7. Shannopin owns the Shannopin Dock site (“Facility”) located at Lat/Long: 39.771875/-79.935630, in Poland Mines, Pennsylvania.
8. Mepco employees manage and maintain the Facility.
9. At all times relevant to this CA/FO, Respondents have been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.
10. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C.

§ 9601(9), and 40 C.F.R. § 302.3.

11. On May 22, 2015, EPA issued an information request letter to the Facility, pursuant to Section 104 of CERCLA, inquiring into the release of sodium hydroxide that occurred on or about March 17, 2015.

12. Respondents submitted a response to EPA's information request on June 18, 2015.

13. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

14. Sodium hydroxide, Chemical Abstract Services ("CAS") No. 1310-73-2, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 1000 pounds, as listed in 40 C.F.R. § 302.4.

15. According to information provided by Respondents in the June 18, 2015, reply to EPA's information request letter, on March 16 or 17, 2015, approximately 750 gallons of a solution that is comprised of 20% sodium hydroxide was released from the Facility ("the Release").

16. Based on information submitted to EPA by Respondents, EPA calculated that 1,534.5 pounds of sodium hydroxide was released from the Facility.

17. According to information submitted to EPA by Respondents, Respondents first became aware of the Release at approximately 10:11 a.m. on March 17, 2015, when a Mepco environmental technician was passing the Shannopin Dock Site, while en route to another site owned by a sister company of Shannopin Materials, LLC, and he looked over and noticed that the level of caustic solution in the tank appeared to be low. The technician turned around and entered the site where he discovered the release. The employee observed that the release was caused by a break in the PVC fitting at the base of a tank holding the sodium hydroxide solution, releasing the entire contents of 750 gallons. The sodium hydroxide flowed out of the tank; onto the wooden decking supporting the tank, and then onto the surface of the coal refuse surrounding the area.

18. The Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

19. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

20. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

21. Respondents notified the NRC of the Release on March 18, 2015, at 8:23 a.m., 22 hours and 12 minutes after discovering the Release.

22. Respondents failed to immediately notify the NRC of the Release as soon as Respondents knew or should have known there was a release of a hazardous substance at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

CONCLUSION OF LAW

23. Respondents’ failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondents are, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

SETTLEMENT

24. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondents consent to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$8,356.00**.

25. Respondents consent to the issuance of this Consent Agreement, and consent for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

26. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondents shall pay the civil penalty of \$8,356.00 no later than thirty (30) days after the effective date of the Final Order (the “Final Due Date”) by either cashier’s check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

27. Payment of the civil penalty shall be made in the following manner:
- a. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CERCLA-03-2016-0168;
 - b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
 - c. Payment for the civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Contact: Elizabeth McGuffey (513-487-2885)

- d. Payment for the civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. Payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. Payment made by electric wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. Electronic payment made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- i. Additional payment guidance is available at:

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

28. Respondents shall submit proof of the penalty payment, noting the title and docket number of this case, to the following persons:

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

and

Suzanne Parent (3RC42)
Associate Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

29. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

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

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

32. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

33. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

34. Failure by the Respondents to pay the CERCLA civil penalty assessed by the Final Order in full by the Final Due Date may subject Respondents to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

35. For the purpose of this proceeding, Respondents expressly waive their rights to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609.

36. The provisions of the CA/FO shall be binding upon Respondents, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondents is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally

bind Respondents to the terms and conditions of the Consent Agreement and accompanying Final Order.

37. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondents, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

38. Each party to this action shall bear its own costs and attorney's fees.

In Re: Shannopin Dock Site

EPA Docket No.: CERCLA-03-2016-0168

FOR SHANNOPIN MATERIALS, LLC

Brian M. Osborn
Signature

July 14, 2016
DATE

Brian M. Osborn
Print Name

SVP - Operations
Title

In Re: Shannopin Dock Site

EPA Docket No.: CERCLA-03-2016-0168

FOR MEPCO INTERMEDIATE HOLDINGS, LLC

Brian M. Osborn
Signature

July 14, 2016
DATE

Brian M. Osborn
Print Name

SVP - Operations
Title

In Re: Shannopin Dock Site

EPA Docket No.: CERCLA-03-2016-0168

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Joan Armstrong

for _____
Dominique Lueckenhoff, Acting Director
Hazardous Site Cleanup Division

July 28, 2016

DATE

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of)	U.S. EPA Docket No.: CERCLA-03-2016-0168
)	
Shannopin Materials, LLC)	
103 Corporate Drive, Suite 102)	
Morgantown, WV 26501)	
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and)	
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Mepco Intermediate)	FINAL ORDER
Holdings, LLC)	
103 Corporate Drive, Suite 102)	
Morgantown, WV 26501)	
)	
Respondents.)	
)	Proceeding under Sections 103 and
Shannopin Dock)	109 of the Comprehensive Environmental
Poland Mines, PA)	Response, Compensation and Liability
Lat/Long: 39.771875/ -79.935630)	Act, 42 U.S.C. §§ 9603 and 9609
)	
)	
Facility.)	

FINAL ORDER

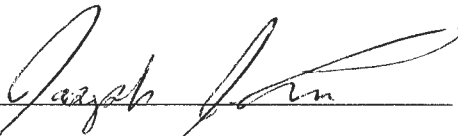
Complainant, the Acting Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondents, Shannopin Materials, LLC, and Mepco Intermediate Holdings, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and the statutory factors set forth in Section 109 of the *Comprehensive Emergency Response, Compensation and Liability Act*, 42 U.S.C. § 9609.

NOW, THEREFORE, PURSUANT TO Section 109 of the Comprehensive Emergency Response, Compensation and Liability Act, 42 U.S.C. § 9609, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of ***EIGHT THOUSAND THREE HUNDRED FIFTY-SIX DOLLARS (\$8,356.00)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

July 29 2016
Date



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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2016 JUL 28 PM 4: 18

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

In the Matter of:

**Shannopin Materials, LLC
103 Corporate Drive, Suite 102
Morgantown, WV 26501,**

and

**Mepco Intermediate
Holdings, LLC
103 Corporate Drive, Suite 102
Morgantown, WV 26051,**

Respondents.

**Shannopin Dock
Poland Mines, PA
Lat/Long: 39.771875/-79.935630,**

Facility.

EPA Docket No. CERCLA-03-2016-0168

**Proceedings Pursuant to Sections 103 and
109 of the Comprehensive Environmental
Response, Compensation, and Liability
Act, 42 U.S.C. §§ 9603 and 9609**


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order (“CAFO”) with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the CAFO was sent by overnight mail to:

Brian M. Osborn
SVP - Operations
Shannopin Materials, LLC
Mepco Intermediate Holdings, LLC
103 Corporate Drive, Suite 102
Morgantown, WV 26501

I further certify that I have sent a copy of the CAFO by electronic mail to Respondents’ representative Brian M. Osborn on this day.

7/28/16
DATE



Ray Alvarez
Law Clerk (215) 814-2462