

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).

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, Respondent Zekelman Industries, Inc. admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.

4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FINDINGS OF FACT

5. Respondent is a corporation incorporated in the Commonwealth of Pennsylvania in 1933.

6. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 355.61.

7. Respondent is the owner and operator of a steel pipe and conduit manufacturing facility located at 1 Council Avenue in Wheatland, Pennsylvania 16161 ("the Facility"). The Facility began operations in approximately 1931 and uses a fiberglass process tank with a capacity of 20,000 gallons to store sulfuric acid that is used in its operations.

8. On August 22, 2013, a release of sulfuric acid occurred from the Facility ("the Release").

9. On March 25, 2015, EPA conducted an inspection of the Facility to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-11022.

10. On May 11, 2016, EPA sent a post-inspection letter to Respondent, which discussed potential violations of the emergency release reporting requirements of Section 304 of EPCRA, 42 U.S.C. § 11004, in connection with the Release, and of the emergency planning and community right-to-know requirements of Section 312 of EPCRA, 42 U.S.C. § 11022.

11. Respondent submitted to EPA its response to the post-inspection letter by letter dated June 3, 2016, in which Respondent indicated that it had addressed all potential compliance

concerns and implemented corrective measures to ensure that the potential violations would not occur in the future.

Counts 1-2
**FINDINGS OF FACT RELATED TO THE
VIOLATIONS OF SECTION 304 OF EPCRA**

12. The findings of fact and conclusions of law contained in Paragraphs 5 through 11 of this CA/FO are incorporated by reference herein as though fully set forth at length.

13. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of 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. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a)(1), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility to immediately notify the State Emergency Response Commission (“SERC”) as soon as he/she has knowledge of a release of a hazardous substance or an extremely hazardous substance (“EHS”) in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

15. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, and the release requires immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must provide a written follow-up emergency notice regarding the release to the SERC as soon as practicable.

16. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.

17. At all times relevant to this CA/FO, Respondent has 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.

18. Respondent is the “owner” and “operator” of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.2 and 355.40.

19. According to information provided by Respondent, the Release began at approximately 2:14 a.m. on August 22, 2013.

20. According to information provided by Respondent, sulfuric acid, Chemical Abstract Service (“CAS”) No. 7664-93-9, was released into a containment area, then overflowed from containment into trenches and flowed to the tributary that leads to the Shenango River.

21. Based on information provided by Respondent, EPA estimates that 6,505 pounds of sulfuric acid were released from the Facility’s containment area during the Release.

22. Sulfuric acid is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 1,000 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.

23. The SERC for the Facility for purposes of release reporting is the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania.

24. The Release required immediate notification to the SERC pursuant to Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 C.F.R. Part 355, Subpart C.

25. Respondent did not notify the SERC of the Release.

26. Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 304 of EPCRA that occurs before January 30, 1997. The statutory maximum penalty level has been adjusted over time, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996. Pursuant to these authorities, EPA is authorized to commence an administrative action to assess civil penalties of not more than \$37,500 for each violation of Section 304 of EPCRA that occurs between January 12, 2009 and November 2, 2015.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 304 OF EPCRA**

Count 1

27. Respondent failed to immediately notify the SERC of the Release as soon as Respondent knew or should have known that a release of an extremely hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 C.F.R. Part 355, Subpart C.

28. Respondent’s failure to immediately notify the SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Respondent is, therefore, subject to the assessment of penalties under Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1).

Count 2

29. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Consequently, the owner or operator was required to provide a written follow-up emergency notice to the SERC as soon as practicable, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

30. Respondent did not provide a written follow-up report regarding the Release to the SERC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

31. Respondent's failure to submit a written follow-up emergency notice to the SERC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1).

Count 3**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA**

32. The findings of fact and conclusions of law contained in Paragraphs 5 through 31 of this CA/FO are incorporated by reference herein as though fully set forth at length.

33. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS"), now known as a Safety Data Sheet ("SDS"), for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical, including, but not limited to, a hazardous chemical which also qualifies as an EHS, is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting ("MTL") or threshold planning quantity ("TPQ") to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, Local Emergency Planning Committee ("LEPC"), and local fire department with jurisdiction over the facility.

34. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 312 of EPCRA that occurs before January 30, 1997. The statutory maximum penalty level has been adjusted over time, as required by the Federal Civil Penalties

Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996. Pursuant to these authorities, EPA is authorized to commence an administrative action to assess civil penalties of not more than \$37,500 for each violation of Section 312 of EPCRA that occurs between January 12, 2009 and November 2, 2015.

35. Information provided by Respondent indicated that Respondent had present at the Facility 12 chemicals in the following listed specific amounts each exceeding 10,000 pounds during calendar year 2012: calcium hydroxide (45,000 pounds), diesel fuel (15,000 pounds), ferric chloride solution (45,000 pounds), ferrous sulfate heptahydrate (150,000 pounds), Future Fluids 2084 cutting oil (20,000 pounds), IVC pipe coating with naphtha (25,000 pounds), oxygen (40,000 pounds), Polar Sol 500-weight oil (40,000 pounds), sodium hydroxide (80,000 pounds), sulfuric acid solution (150,000 pounds), zinc (molten and dust) (200,000 pounds), and zinc ammonium chloride (80,000 pounds).

36. Calcium hydroxide, diesel fuel, ferric chloride solution, ferrous sulfate heptahydrate, Future Fluids 2084 cutting oil, IVC pipe coating with naphtha, oxygen, Polar Sol 500-weight oil, sodium hydroxide, sulfuric acid solution, zinc (molten and dust), and zinc ammonium chloride are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and are subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

37. The TPQ for each of the following 11 hazardous chemicals — calcium hydroxide, diesel fuel, ferric chloride solution, ferrous sulfate heptahydrate, Future Fluids 2084 cutting oil, IVC pipe coating with naphtha, oxygen, Polar Sol 500-weight oil, sodium hydroxide, zinc (molten and dust), and zinc ammonium chloride — is 10,000 pounds, and the MTL for sulfuric acid is 500 pounds. 40 C.F.R. Part 355, Appendix A.

38. Respondent had present at the Facility 12 chemicals during calendar year 2012 in quantities equal to or exceeding their respective TPQs or MTL.

39. The SERC for purposes of community right-to-know reporting for the Facility is, and has been at all times relevant to this Consent Agreement, the Pennsylvania Department of Labor & Industry, Bureau of PENNSAFE, located at 651 Boas Street, in Harrisburg, Pennsylvania.

40. The LEPC for the Facility is the Mercer County Department of Public Safety, located at 205 South Erie Street in Mercer, Pennsylvania.

41. The local fire department for the Facility is the Wheatland Volunteer Fire Department, located at 71 Broadway Avenue in Wheatland, Pennsylvania.

42. Respondent submitted the Hazardous Chemical Inventory Form for calendar year 2012 to the SERC on March 28, 2013, 27 days late, and to the LEPC and the local fire department on April 9, 2013, 39 days late.

43. Respondent did not timely submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2012 by March 1, 2013, identifying the 12 chemicals as present at the Facility in a quantity equal to or greater than the TPQs or MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA**

Count 3

44. Respondent's failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility complete and accurate Chemical Inventory Forms for the Facility for calendar year 2012 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022. Respondent is, therefore, is subject to the assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

SETTLEMENT

45. 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, Respondent consents to the assessment of a civil penalty for violations of Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022, in the amount of \$29,686 ("EPCRA civil penalty").

PAYMENT TERMS

46. 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, Respondent shall pay the EPCRA civil penalty of \$29,686 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.

47. Payment of the EPCRA civil penalty shall be made in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2016-0217**;
 - b. All checks shall be made payable to **United States Treasury**;
 - c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

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

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

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

U.S. 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. Online 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

48. Respondent shall submit proof of the penalty payment, noting the title and docket numbers 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

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

49. The EPCRA 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 325 of EPCRA, 42 U.S.C. § 11045. 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).

50. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment 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.

51. 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 Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

52. 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.

53. 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).

54. Failure by Respondent to pay the EPCRA civil penalty assessed by the Final Order in full by the Final Due Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

55. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

56. The provisions of the CA/FO shall be binding upon Respondent, 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 Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

57. This CA/FO resolves only the civil penalty claims for the specific violations alleged in this Consent Agreement. Complainant reserves the right to commence action against any person, including Respondent, 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. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

58. By signing this Consent Agreement, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

59. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

60. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

61. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

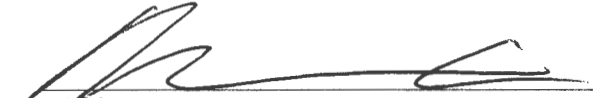
62. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

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

In the Matter of: Zekelman Industries, Inc.

EPA Docket No.: EPCRA-03-2016-0217

FOR ZEKELMAN INDUSTRIES, INC.



Mickey McNamara
Vice President and General Counsel

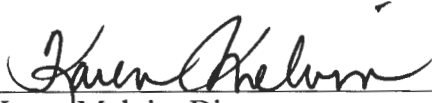


Date

In the Matter of: Zekelman Industries, Inc.

EPA Docket No.: EPCRA-03-2016-0217

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director
Hazardous Site Cleanup Division

SEP 20 2016

Date

BEFORE THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION III

In the Matter of:)
) EPA Docket No.: EPCRA-03-2016-0217
)
Zekelman Industries, Inc.)
(d/b/a Wheatland Tube Company))
1 Council Avenue) Proceedings Pursuant to Sections
Wheatland, Pennsylvania 16161,) 304, 312 and 325 of the Emergency
) Planning and Community Right-to-Know
Respondent.) Act, 42 U.S.C. §§ 11004, 11022 and 11045
)
1 Council Avenue)
Wheatland, Pennsylvania 16161,)
)
Facility.)
)

FINAL ORDER

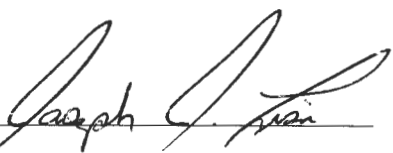
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Zekelman Industries, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules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

Based on 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 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

NOW, THEREFORE, PURSUANT TO Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **TWENTY-NINE THOUSAND SIX HUNDRED EIGHTY-SIX DOLLARS (\$29,686)**, 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.

Sept. 22, 2016
Date



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

