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

In the matter of:	:	
	:	
Dana Container, Inc.	:	**U.S. EPA Docket RCRA–03–2016–0213**
1280 Railcar Avenue	:	
Wilmington, DE 19802	:	
	:	**Proceeding under Section 3008(a) and (g)**
Respondent,	:	**of the Resource Conservation and**
	:	**Recovery Act, as amended,**
Dana Container, Inc.	:	**42 U.S.C. § 6928(a) and (g)**
1280 Railcar Avenue	:	
Wilmington, DE 19802	:	
	:	
Facility.	:	
	:	

2016 SEP 14 PM 2:38

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division ("Complainant"), U.S. Environmental Protection Agency, Region III ("EPA" or the "Agency"), and Dana Container, Inc. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and the accompanying Final Order simultaneously commence and conclude this administrative proceeding against the Respondent.

3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Delaware has been granted final authorization to administer its hazardous waste management program, set forth in the Delaware Regulations Governing Hazardous Waste ("DRGHW") Parts 260 – 279, and Parts 122 and 124., *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The DRGHW were authorized pursuant to RCRA Section 3006, 42 U.S.C. § 6926, (see 53 Fed. Reg. 23837 (June 8, 1984), 61 Fed. Reg. 41345 (August 8, 1996), 62 Fed. Reg. 44152 (August 18, 1998), 65 Fed. Reg. 42871 (July 12, 2000), 67 Fed. Reg. 51478 (August 8, 2002), 69 Fed. Reg. 10171 (March 4, 2004) and 69 fed. Reg. 60091 (October 7, 2004)). As such, certain provisions of Delaware's hazardous waste management program, through these authorizations, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

4. The provisions of the revised federally-authorized program have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

5. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment if a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

6. This Consent Agreement ("CA") and the accompanying Final Order ("FO") (collectively, the "CAFO") address alleged violations by Respondent of the State of Delaware's federally-authorized DRGHW, Parts 260 – 279, and Parts 122 and 124, in connection with Respondent's facility. Respondent's facility is located at 1280 Railcar Avenue, Wilmington, Delaware 19802 ("Facility") and is further described below.

7. Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized DRGHW requirements cite those respective provisions as the authority for such allegations or conclusions.

8. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated April 7, 2016, EPA notified the Delaware Department of Natural Resources and Environmental Control ("DNREC") of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

9. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

10. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in the CAFO, except as provided in Paragraph 9, above.

11. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

12. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

13. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

14. Respondent shall bear its own costs and attorney's fees.

15. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:

17. EPA has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).

18. Respondent is a Delaware Corporation organized under the laws of the State of Delaware. Respondent is now, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and DRGHW § 260.10.

19. The Facility (RCRA I.D. Number DED1318738543) consists of approximately 5.78 acres and has been operating at its current location since 1981. Respondent refurbishes railcars at the Facility through various processes including steam cleaning, sandblasting and making repairs.

20. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, the "operator" and the "owner" of the Facility, as those terms are defined in DRGHW § 260.10.

21. As described below, and at all times relevant to the allegations set forth in this CA, Respondent is, and has been, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in DRGHW § 260.10.

22. Respondent generates waste benzene (D018), waste water and vinyl acetate (D001), waste solvent (D001), and universal waste lamps at the Facility. The waste benzene (D018), waste water and vinyl acetate (D001), and waste solvent (D001) are each a "hazardous waste" within the meaning of DRGHW § 260.10.

23. At all times relevant to the allegations set forth in this CA, and as described below, Respondent is, and has been, engaged in the "storage" of "solid waste" and "hazardous waste" in "containers" at the Facility, as those terms are defined in DRGHW § 260.10.

24. At all times relevant to the allegations set forth in this CA, Respondent's Facility is, and has been, a hazardous waste storage "facility" as that term is defined in DRGHW § 260.10.

25. On January 28, 2016, two duly-authorized representatives of EPA ("EPA Inspectors") conducted a Compliance Evaluation Inspection at the Facility (the "CEI" or "Inspection"), to examine the Respondent's compliance with the federally-authorized DRGHW and applicable federal hazardous waste regulations.

26. On July 19, 2016, EPA sent a Request to Show Cause and Request for Information ("Show Cause letter") to Respondent advising it of EPA's preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent's compliance with the federally-authorized DRGHW and applicable federal hazardous waste regulations at the Facility. Respondent provided additional information to EPA in response to the Show Cause letter.

27. On the basis of EPA's findings during the Inspection and Respondent's response to EPA's Show Cause letter, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized DRGHW requirements promulgated thereunder.

Permit/Interim Status Requirements

28. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and DRGHW § 122.1(c), with exceptions not relevant to this matter, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

29. At no time did the Respondent have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or DRGHW § 122.1, for the storage of hazardous waste at the Facility.

30. At no time did the Respondent have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or DRGHW § 122.70.

Permit Exemption Conditions - Accumulation Time Requirements

31. The provisions of DRGHW § 262.34 provide, in relevant part, that a generator may accumulate hazardous waste on-site in containers or in tanks without a permit or without having interim status, for 90 days or less, so long as the hazardous waste is accumulated in accordance with a number of conditions set forth in that section, including, *inter alia*:

    a. the condition set forth at DRGHW § 262.34(a), which requires that the waste be shipped off-site within 90 days;

    b. the condition set forth at DRGHW § 262.34(a)(1)(i), which requires that waste in containers must be accumulated in accordance with DRGHW, Part 265, Subparts I, AA, BB and CC, which includes provisions pertaining to the "Management of Containers", which are set forth at 265.173, and which further require that:

       (a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

       (b) A container holding hazardous waste must not be opened, handled, or stored in any manner which may rupture the container or cause it to leak.

    c. the condition set forth at DRGHW§ 262.34(a)(2), which requires that "[t]he date upon which each period of accumulation begins is clearly marked and visible for inspection on each container";

    d. the condition set forth at DRGHW§ 262.34(a)(3), which requires that "[w]hile being accumulated on-site, each container and tank is labeled or marked clearly with the words 'Hazardous Waste'"; and

    e. the condition set forth at DRGHW § 262.34(a)(4), which requires, in relevant and applicable part, that "[t]he generator complies with the requirements for owners and operators in Subparts C and D of part 265, [and] with § 265.16 . . . of these regulations," pertaining to "Personnel Training," including the document and record maintenance requirements of DRGHW § 265.16(d) and the "Contingency and Emergency Procedures" of DRGHW § 265.52.

COUNT I

(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

32. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

33. Although the provisions of DRGHW § 262.34(a) provide hazardous waste generators with an exemption from the permitting requirements for the temporary storage (90 days or less) of hazardous waste generated by a facility (referred to here as the "90-day storage exemption"), Respondent failed to meet the conditions necessary to qualify for the exemption set forth in DRGHW § 262.34(a).

34. The following acts or omissions, further described below, prevented Respondent from meeting the regulatory permit exemption conditions in DRGHW § 262.34(a):

    a. Respondent stored hazardous waste on-site at the Facility for time periods in excess of the 90-day storage limitation set forth at DRGHW § 262.34(a) during the following time periods:

        1. Respondent stored two containers of hazardous waste benzene (hazardous waste code D018), on-site at the Facility from 2/10/14 through 5/15/2014, a period of 94 days.

        2. Respondent stored three containers of a hazardous waste mixture of water and vinyl acetate (hazardous waste code D001) on-site at the Facility from 6/29/2015 through 10/5/2015, a period of 98 days.

    b. At the time of the January 28, 2016 Inspection, Respondent failed to label a container of D001 waste solvent being accumulated in a Satellite Accumulation Area of the Paint Building at the Facility with the words "Hazardous Waste," in contravention of the requirements of DRGHW § 262.34(c) and the permit exemption condition set forth at DRGHW § 262.34(a)(3).

    c. At the time of the January 28, 2016 Inspection, Respondent failed to maintain adequate training and personnel records at the Facility, as further described in Count III, below, in contravention of DRGHW § 265.16(d) and the permit exemption condition set forth at DRGHW § 262.34(a)(4).

    d. At the time of the January 28, 2016 Inspection, Respondent failed to maintain a Facility Contingency Plan for the Facility which met each of the requirements of DRGHW § 265.52(c), as further described in Count IV, below, in contravention of DRGHW § 265.52(c) and the applicable permit exemption condition set forth at DRGHW § 262.34(a)(4).

35. For each of the reasons and during each of the dates and time periods identified in Paragraph 34, above, Respondent failed to comply with the permit exemption conditions set forth in DRGHW § 262.34(a) for temporary *(i.e.*, 90 days or less) accumulation of hazardous waste by a generator at the Facility, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.

36. For each of the reasons and during each of the dates and time periods identified in Paragraph 34, above, Respondent engaged in the operation of a hazardous waste storage facility (*i.e.*, the Facility) without having interim status or obtaining a permit for the Facility pursuant to DRGHW § 122.1(c) or Section 3005 of RCRA, 42 U.S.C. § 6925.

37. Respondent violated DRGHW § 122.1(c) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility (*i.e.*, the Facility) without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II
(Failure to Keep Manifests, or Submit or Keep Associated Exception Reports)

38. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

39. DRGHW § 262.20(a) provides, in relevant and applicable part, that a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest.

40. DRGHW § 262.23(a) further provides that a generator of hazardous waste must sign the manifest certification by hand and obtain the handwritten signature of the initial transporter and date of acceptance on the manifest.

41. DRGHW 262.42(a) provides that a generator who does not receive a copy of the manifest with a hand written signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste, and if it has not been delivered the generator must identify the shipment and report it to the State in which the shipment originated.

42. DRGHW 262.42(b) provides that a generator must submit an Exception Report to the DNREC if he has not received a copy of the manifest/ shipping paper with the handwritten signature of the of the owner or operator of the designated facility within 45 days of date the waste was accepted by the initial transporter. DRGHW 262.42(b) also provides that the generator must notify the State in which the manifest designated facility is located and the State to which the shipment may have been delivered.

43. DRGHW 262.40(a) provides that a generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

44. DRGHW 262.40(a) provides that a generator must keep a copy of each Annual Report and Exception Report for a period of at least 3 years from the due date of the report.

45. On January 28, 2016, Respondent failed to retain as a record two hazardous waste manifests with the signatures of representatives from the designated receiving facilities that received the associated hazardous waste less than 3 years prior. (Manifest Numbers 014687968JJK and 014687133JJK).

46. On January 28, 2016, Respondent failed to retain as a record two Exception Reports submitted to the DNREC stating that it had not received a copy of the manifest/ shipping paper with the handwritten signature of the of the owner or operator of the designated facility, for hazardous waste shipped under hazardous waste Manifest numbers 014687968JJK and 014687133JJK.

47. Respondent violated the requirements of DRGHW § 262.40(a), § 262.42(b) or § 262.40(b) by either:

    (a) failing, on January 28, 2016, to retain as a record, signed, return copies of hazardous waste Manifest numbers 014687968JJK and 014687133JJK, pursuant to the requirements of the requirements of DRGHW § 262.40(a); or

    (b) failing to submit two timely Exception Reports to DNREC, pursuant to the requirements of DRGHW § 262.42(b), within 45 days of the respective dates that the hazardous wastes associated with hazardous waste Manifest numbers 014687968JJK and 014687133JJK were accepted by their initial transporters; or

    (c) submitting two Exception Reports to DNREC, pursuant to the requirements of DRGHW § 262.42(b), after failing, within 45 days, to receive signed, return copies of hazardous waste Manifest numbers 014687968JJK and 014687133JJK from the initial transporters of such hazardous waste, but thereafter failing, on January 28, 2016, to retain as a record, copies of those two Exception Reports, pursuant to the requirements of DRGHW § 262.40(b).

COUNT III
(Failure to Maintain Training Records)

48. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

49. The provisions of DRGHW § 264.16, entitled "Personnel Training," provide, in relevant and applicable part, as follows:

    > (a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. . . .
    >
    > (b) Facility personnel shall successfully complete the program required above, within 6 months after the effective date of these regulations or 6 months after the

date of their employment or assignment to a facility, or to a new position at a facility, whichever is later . . . .

(c) Facility personnel shall take part in an annual review of the initial training required above.

(d) The owner or operator shall maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of each employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. . . . ;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section.

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be kept until closure of the facility....

50. On January 28, 2016, in response to a request by the EPA Inspectors, Respondent provided written job descriptions for employees engaged in hazardous waste management positions at the Facility.

51. The written job descriptions provided by Respondent to the EPA Inspectors on January 28, 2016 failed to identify or to indicate that any hazardous waste training requirements had been established for, or provided to, Facility employees engaged in hazardous waste management positions at the Facility, or to identify the requisite skill, education, qualifications and duties of the employees assigned to each such position.

52. Respondent violated the requirements of DRGHW § 264.16(d)(3) by failing to maintain at the Facility, on January 28, 2016, a written description of the type and amount of both introductory and continuing training to be given to each person holding a hazardous waste management position at the Facility.

COUNT IV
(Failure to Maintain Adequate Contingency Plan)

53. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

54. The provisions of DRGHW Part 264, Subparts C and D, pertain to "Preparedness and Prevention" and "Contingency and Emergency Procedures."

55. DRGHW Part 264, Subparts C include the "Preparedness and Prevention" requirements of DRGHW § 264.37, which provides, in relevant and applicable part, that the owner or operator of a hazardous waste treatment, storage or disposal facility must attempt to make arrangements with local emergency response organizations. Required arrangements include an opportunity for these organizations to familiarize themselves with the facility and the properties of the hazardous wastes handled at the facility. Required arrangements also include agreements for emergency response.

56. The provisions of DRGHW § 264.50 provide as follows: "Applicability. The regulations in this [Part 264, Subpart D] apply to owners and operators of all hazardous waste facilities [with an exception not herein applicable]."

57. The provisions of DRGHW § 264.51 "Purpose and Implementation of Contingency Plan," provide as follows: "(a) Every owner or operator shall have a contingency plan for his facility . . . designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility."

58. The provisions of DRGHW § 264.52 "Content of Contingency Plan," provide as follows: "(b) The plan must describe 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 § 264.37."

59. On January 28, 2016, Respondent provided the EPA Inspectors with a contingency plan for the Facility.

60. The contingency plan for the Facility provided by Respondent to the EPA Inspectors on January 28, 2016 did not include a description of arrangements made with police, fire departments and emergency response teams, as required by DRGHW § 264.52(b).

61. Respondent violated the requirements of DRGHW § 264.52(b) by failing to have a contingency plan at the Facility on January 28, 2016 that described the arrangements made with police, fire departments and emergency response teams pursuant to DRGHW § 264.37.

COUNT V
(Failure to Properly Manage Universal Waste Lamps)

62. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

63. DRGHW § 273.5 provides that the requirements of DRGHW Part 273 apply to persons managing lamps as described in DRGHW § 273.9, with exceptions not relevant here.

64. DRGHW § 273.9 defines "lamp" or a "universal waste lamp" to mean the bulb or tube portion of an electric lighting device.

65. DRGHW § 273.9 defines "Small Quantity Handler of Universal Waste" to mean a universal waste handler, as that term is defined in DRGW § 273.9, who does not accumulate 5,000 kilograms or more of total universal waste (batteries, pesticides, thermostats, or lamps, calculated collectively) at any time.

66. DRGHW § 273.10 provides that the requirements of DRGHW Part 273, Subpart B, apply to small quantity handlers of universal waste.

67. At the time of the January 28, 2016 Inspection, Respondent was a Small Quantity Handler of universal waste lamps at the Facility.

68. The provisions of DRGHW § 273.13(d)(1) require that a small quantity handler of universal waste lamps must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

69. The provisions of DRGHW § 273.14(e) require that each lamp in a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste—Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

70. At the time of the January 28, 2016 Inspection, Respondent was storing universal waste lamps in a box at the Facility that was open, and therefore not structurally sound and adequate to prevent breakage.

71. At the time of the January 28, 2016 Inspection, Respondent was storing universal waste lamps in a box at the Facility that was not marked or labeled clearly with one of the following phrases: "Universal Waste—Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

72. On January 28, 2016, Respondent violated the requirements of DRGHW § 273.13(d)(1) by failing to contain universal waste lamps in storage at the Facility in containers or packages that were structurally sound and adequate to prevent breakage.

73. In addition, On January 28, 2016, Respondent violated the requirements of DRGHW § 273.14(e) by failing to label or mark clearly each lamp or box containing universal waste lamps in storage at the Facility with one of the following phrases: "Universal Waste—Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

IV. CIVIL PENALTIES

74. Respondent agrees to pay a civil penalty in the amount of **$12,000.00 (TWELVE THOUSAND DOLLARS)** in full and final settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations and facts alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

75. The civil penalty settlement amount set forth in Paragraph 74, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has also considered the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and the December 6, 2013 Memorandum by EPA Assistant Administrator, Cynthia Giles, entitled, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective December 6, 2013). The settlement in this proceeding is consistent with the provisions and objectives of Section 3008 of RCRA, and its implementing regulations.

76. Payment of the civil penalty set forth in Paragraph 74, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 78 through 81, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

    a. All payments by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, i.e., **RCRA–03–2016–0213**;

    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 and mailed to:

        U.S. Environmental Protection Agency
        Fine and Penalties
        Cincinnati Finance Center
        P.O. Box 979077
        St. Louis, MO 63197-9000

Customer service contact: 513-487-2091

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:
U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

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

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

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

Contact: 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://www2.epa.gov/financial/makepayment

or by contacting Craig Steffen at 513-487-2091

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

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

and

Natalie Katz
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

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

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

80. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b).

Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

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

82. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. CERTIFICATIONS

83. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of the current, authorized revised DRGHW and of RCRA Subtitle C, 42 U.S.C. §§ 6921 - 6939g, for which violations are alleged in this Consent Agreement.

VI. OTHER APPLICABLE LAWS

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

VII. RESERVATION OF RIGHTS

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

VIII. FULL AND FINAL SATISFACTION

86. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this Consent Agreement.

IX. PARTIES BOUND

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

X. EFFECTIVE DATE

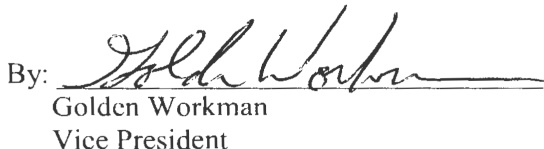
88. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XI. ENTIRE AGREEMENT

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

For Respondent:

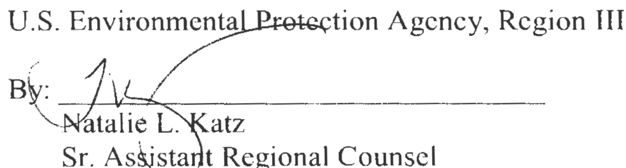
Date: 9-7-2016

By: 
Golden Workman
Vice President

For the Complainant:

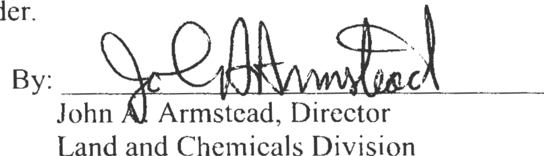
U.S. Environmental Protection Agency, Region III

Date: 9/7/2016

By: 
Natalie L. Katz
Sr. Assistant Regional Counsel

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

Date: 9.9.16

By: 
John A. Armstead, Director
Land and Chemicals Division

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

In the matter of:	:	
	:	
Dana Container, Inc.	:	**U.S. EPA Docket RCRA–03–2016–0213**
1280 Railcar Avenue	:	
Wilmington, DE 19802	:	
	:	**Proceeding under Section 3008(a) and (g)**
Respondent,	:	**of the Resource Conservation and**
	:	**Recovery Act, as amended,**
Dana Container, Inc.	:	**42 U.S.C. § 6928(a) and (g)**
1280 Railcar Avenue	:	
Wilmington, DE 19802	:	
	:	
Facility.	:	
	:	

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FINAL ORDER

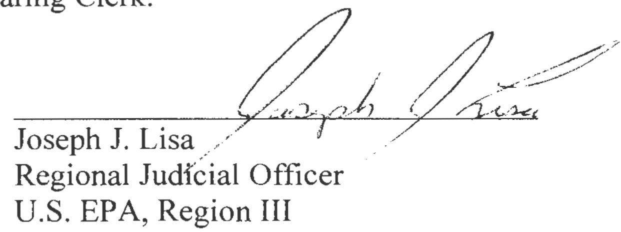
Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Dana Container, Inc. ("Respondent"), have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if 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 October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty payment of **$12,000.00 (TWELVE THOUSAND DOLLARS)**, in accordance with the payment provisions set forth in of 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 the Final Order is filed with the Regional Hearing Clerk.

Sept. 14, 2016
Date:



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

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

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EPA REGION III, PHILA. PA

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by UPS Next Day Delivery, a copy of the Consent Agreement and Final Order to the addressee listed below:

Golden Workman
Vice President
Dana Container, Inc.
1280 Railcar Avenue
Wilmington, DE 19802

The original and one copy of were hand-delivered to, and filed with, the Regional Hearing Clerk, U.S. EPA Region III.

Dated: 9/14/16

Natalie Katz (3RC30)
~~Senior~~ Assistant Regional Counsel
EPA Region III
1650 Arch Street
Philadelphia, PA 19103