

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2007-4006(b)
	)	
Diversified Container Services, Inc.	)	Proceeding under Section 3008(a)
8831 Moncrief/Dinsmore Road	)	of the Resource Conservation and
Jacksonville, Florida 32219	)	Recovery Act, 42 U.S.C. § 6928(a)
EPA ID No.: FLR 000 134 221	)	
	)	
	)	
Respondent.	)	
	)	

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**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq., and the Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403.702 et seq. This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270, and Fla. Stat. § 403.702 et seq. and regulations promulgated pursuant thereto and set forth in the Florida Administrative Code Annotated (Fla. Admin. Code Ann. R.), Chapter 62-730.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 CFR Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 CFR §§ 22.13(b) & 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 CFR § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## **II. THE PARTIES**

4. Complainant is the Chief, RCRA & OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Diversified Container Services, Inc., a corporation incorporated in Florida. The business is located at 8831 Moncrief/Dinsmore Road, Jacksonville, Florida 32219.

## **III. PRELIMINARY STATEMENTS**

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926(g), on February 12, 1985, the State of Florida ("the State") received final authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in Fla. Stat. § 403.702 et seq. and F.A.C. Chapter 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the State's authorization status. On November 17, 2000, the State of Florida received authorization under HSWA.
8. Although EPA has granted the State of Florida authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Florida before issuance of this CA/FO.
10. Respondent is a corporation incorporated and doing business in the State of Florida.
11. Respondent is a "person" as defined in F.A.C. Chapter 62-730.020 (40 CFR § 260.10).
12. Respondent is the "owner" and "operator" of a "facility" located at 8831 Moncrief/Dinsmore Road, Jacksonville, Florida, 32219, as those terms are defined in F.A.C. Chapter 62-730.030 (40 CFR § 260.10).
13. On December 7, 2006, representatives of EPA and the Florida Department of Environmental Protection (FDEP) performed a RCRA compliance evaluation inspection (CEI) of the Facility.
14. Respondent re-conditions various containers (dumpsters, military shipping containers), mill steel, and military vehicles. The re-conditioning process consists

primarily of repair/welding, blasting (steel shot, Black Beauty, and silica sand are used), and painting. The shipping containers are blasted with steel shot in a closed environment (within the Wheelabrator inside the Wheelabrator Building). The spent steel shot is collected in containers, tested for hazardous waste characteristics on an annual basis (results available for calendar years 2003-2006) and disposed of offsite as a solid waste. The military vehicles are blasted using silica sand in an open environment (on the bare ground outside by the stormwater retention pond). The spent silica sand has been tested for hazardous waste characteristics one time (2005) and is disposed of onsite and offsite on an adjacent piece of property as solid waste. Prior to painting, military vehicles are washed as necessary using a caustic degreaser. Painting activities for mill steel, dumpsters, military shipping containers, and military vehicles, occur both inside various buildings and outside on the ground surface.

15. Respondent is a sub-contractor to Honeywell, which has a contract with Blount Island (Marine Corps) for the re-conditioning of the military shipping containers and military vehicles.
16. Respondent operates from 6:30 AM to 4:30 PM Monday through Friday and has approximately 42 employees.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

17. Respondent has been in operation at 8831 Moncrief/Dinsmore Road, Jacksonville, Florida, 32219, since 1985.
18. Respondent, as a result of their re-conditioning activities, generates the wastes listed in paragraph 19 below that are "solid wastes" and "hazardous wastes" as defined in F.A.C. Chapter 62-730.030 (40 CFR §§ 261.2 & 261.3).
19. Hazardous wastes generated at the Respondent's facility as a result of the re-conditioning activities include, but are not limited to: spent solvents, spent paint wastes, and spent rags. Xylene is the primary solvent used by the Respondent in thinning paints prior to use. Methyl ethyl ketone (MEK) is used exclusively by the Respondent to clean-up paint related equipment such as paint spray guns, spray gun lines/pumps, and paint pots. Mineral spirits are used by the Respondent to cleanup truck undercoatings. Spent rags containing solvents are generated by the Respondent as part of the paint related activities. The EPA Hazardous Waste Numbers associated with these wastes are listed in paragraph 20 below.
20. Spent non-halogenated solvent MEK, when used for its solvent properties such as cleaning out spray gun lines, is a listed (ignitability and toxicity are the basis for the listing) hazardous waste and has the EPA Hazardous Waste Number of F005. Paint waste where MEK was used to thin the paint or is a paint ingredient, may be a characteristic hazardous waste with the EPA Hazardous Waste Number of D035, if the waste fails the toxicity characteristic leaching procedure (TCLP) test for MEK. Waste paint, such as waste paint thinned with xylene, may be a characteristic

hazardous waste (ignitability) if the waste paint is a liquid and has a flash point less than 140 °F. A solid waste (as defined in 40 C.F.R. § 261.2) that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001. Spent xylene, if used for its solvent properties (such as cleaning out spray gun lines or other painting equipment), is a listed hazardous waste (listed for ignitability) with the EPA Hazardous Waste Number of F003. Spent mineral spirits with a flash point less than 140 °F are an ignitable hazardous waste with the EPA Hazardous Waste Number of D001. Spent rags containing MEK used for its solvent properties are a listed hazardous waste (F005).

21. Used oil, used oil filters, used antifreeze, parts cleaner fluid (which may be a hazardous waste once spent depending on the type of parts cleaner in use), and spent blast media (steel shot, Black Beauty, silica sand) are also generated.
22. Respondent indicated in its April 2, 2007, information request response, that approximately 376 pounds per month of hazardous waste were generated in 2006, approximately 228 pounds per month of hazardous waste were generated in 2005, and approximately 148 pounds per month of hazardous waste were generated in 2004. In addition, Respondent manifested 7,686 pounds of hazardous waste (Manifest Number 87301) on December 16, 2004, using a temporary EPA Identification Number.
23. A Small Quantity Generator (SQG) of hazardous waste is a generator of between 100-1000 kilograms (220-2200 pounds) of hazardous waste per calendar month, with an on-site accumulation quantity limit of less than or equal to 6000 kilograms (13,200 pounds) of hazardous waste and an accumulation time limit of less than or equal to 180 days. A Conditionally Exempt Small Quantity Generator (CESQG) of hazardous waste is a generator of less than or equal to 100 kilograms (220 pounds) of hazardous waste per calendar month, with an on-site accumulation quantity limit of less than or equal to 1000 kilograms (2200 pounds). A CESQG does not have an accumulation time limit.
24. Respondent was a SQG of hazardous waste in 2005 and 2006, based on Respondent's monthly generation rate which exceeds the SQG minimum generation rate of 220 pounds per month.
25. Respondent did not have an EPA Identification Number prior to the December 16, 2004, shipment (Manifest Number 87301) of hazardous waste. Respondent had a temporary EPA Identification Number for the December 16, 2004, shipment of 7,686 pounds of hazardous waste. The temporary EPA Identification Number was valid for a one-time shipment of hazardous waste and for sixty (60) days from date of issuance by FDEP. Respondent did not have an EPA Identification Number following the shipment of hazardous waste and leading up to December 7, 2006, CEI.
26. Thus, Respondent was in violation of 40 C.F.R. § 262.12(a). This regulation states that generators must not treat, store, dispose of, transport, or offer for transportation,

hazardous waste without having received an EPA identification number from the Administrator.

27. At the time of the CEI a hazardous waste determination had not been made on the contents of the 55-gallon container approximately one-fourth full of liquid, closed and labeled with a corrosive sticker, located in the Empty Container Storage Area.
28. At the time of the CEI a hazardous waste determination had not been made on the discolored soil in the paint overspray area in front of the Paint Department Building.
29. At the time of the CEI a hazardous waste determination had not been made on the dried solids on the floor of the Special Projects Building, on the discolored soil outside of the Special Projects Building, or on the exhaust fan filters used to capture solids within the Special Projects Building.
30. At the time of the CEI a hazardous waste determination had not been made on the blast media in the vacuum container in the Mechanic Shop.
31. At the time of the CEI a hazardous waste determination had not been made on the paint waste on the wooden board located on the ground surface outside of the Detail Paint Trailer/Storage.
32. Thus, with respect to paragraphs 27 through 31 above, Respondent was in violation of 40 CFR § 262.11 for failing to make a hazardous waste determination.
33. At the time of the CEI, 28 5-gallon buckets of hazardous waste (solvent/paint wastes) outside of the Wheelabrator Building and 22 5-gallon buckets of hazardous waste (solvent/paint wastes) outside the Paint Department Building, were open, unlabeled, exposed to the weather, and located on the ground surface. Four 5-gallon buckets of hazardous waste (solvent/paint wastes) located inside of the Special Projects Building and two 5-gallon buckets of hazardous waste (solvent/paint wastes) located inside of the Detail Paint Trailer/Storage, were open and unlabeled.
34. At the time of the CEI, discolored soil was observed in the paint overspray area in front of the Paint Department Building. Paints containing metals, volatile organic compounds, and semi-volatile organic compounds, are used in this area. Paint overspray was not captured for smaller painting activities and was captured for some large painting jobs.
35. At the time of the CEI, the floor of the Special Projects Building was covered in green overspray. The green overspray extended outside of the building onto the site soil and in close proximity to Respondent's drinking water well located at the corner of the Special Projects Building. Exhaust from one of the Special Projects Building's exhaust fans was directed downward in the vicinity of the drinking water well/aerator. The Chemical Agent Resistant Coating (CARC) paint used to paint trucks inside the Special Projects Building, i.e., the source of the green overspray, contains 8%

chromium oxide. The material safety data sheet (MSDS) for the CARC paint indicates that waste from the CARC paint may be hazardous as defined under RCRA (40 CFR 261) and must be tested for ignitability and extractability to determine the applicable EPA hazardous waste numbers.

36. At the time of the CEI, a tank of "High Sulfur Offroad Diesel" was located on the ground surface near the Mechanic Shop. Staining was visible on the ground surface beneath the tank on one end of the tank. Diesel contains hazardous constituents which include, but are not limited to, benzene and naphthalene.
37. At the time of the CEI, paint waste was observed on a wooden board on the outside of the Detail Paint Trailer/Storage. There was no containment on the board, which was placed over the ground surface. There was no cover above the board to prevent rainwater from reaching the board surface. Paints containing volatile organic compounds and semi-volatile organic compounds are used in this area.
38. Thus, with respect to paragraphs 33 through 37 above, Respondent was in violation of 40 CFR § 265.31, for failing to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment.
39. At the time of the CEI, 28 5-gallon containers of hazardous waste (solvent/paint wastes) outside of the Wheelabrator Building; 22 5-gallon containers of hazardous waste (solvent/paint wastes) outside the Paint Department Building; four 5-gallon containers of hazardous waste (solvent/paint wastes) located inside of the Special Projects Building; and, two 5-gallon containers of hazardous waste (solvent/paint wastes) located inside of the Detail Paint Trailer/Storage, did not have accumulation start dates and were not labeled or marked clearly with the words "Hazardous Waste".
40. Thus, Respondent was in violation of 40 CFR § 262.34(a)(2), for failing to clearly mark each hazardous waste container with the accumulation start date.
41. Thus, Respondent was also in violation of 40 CFR § 262.34(a)(3), for failing to mark containers of hazardous waste that are accumulated on-site with the words "Hazardous Waste."
42. At the time of the CEI, the following containers were not closed: 28 5-gallon containers of hazardous waste (solvent/paint wastes) outside of the Wheelabrator Building; 22 5-gallon containers of hazardous waste (solvent/paint wastes) outside the Paint Department Building; four 5-gallon containers of hazardous waste (solvent/paint wastes) located inside of the Special Projects Building; and two 5-gallon containers of hazardous waste (solvent/paint wastes) located inside of the Detail Paint Trailer/Storage. Respondent was allowing the spent solvents/spent mineral spirits/spent paint wastes to evaporate, thereby treating hazardous waste (F005, D001; possibly F003/D035/D007).

43. Thus, Respondent was in violation of 40 CFR § 265.173(a), for failing to keep containers of accumulated hazardous waste closed except when it is necessary to add or remove waste.
44. Thus, Respondent was also in violation of RCRA § 3005 for illegally treating (evaporation meets the definition of “treatment” in 40 C.F.R. § 260.10 since it reduces the volume of the hazardous waste) hazardous wastes without a permit or interim status. As such, Respondent is in violation of the applicable requirements promulgated pursuant to and found at 40 CFR Parts 260-270.
45. At the time of the CEI, solids (F005; possibly F003/D035/D007) resulting from the evaporation of solvent/paint wastes in the 28 5-gallon containers of hazardous waste outside of the Wheelabrator Building; 22 5-gallon containers of hazardous waste outside the Paint Department Building; four 5-gallon containers of hazardous waste located inside of the Special Projects Building; and, two 5-gallon containers of hazardous waste located inside of the Detail Paint Trailer/Storage, were disposed of in the solid waste dumpster. Spent rags containing MEK (F005) were disposed of in the solid waste dumpster.
46. Thus, Respondent was in violation of RCRA § 3005 for illegally disposing of hazardous wastes without a permit or interim status. As such, Respondent is in violation of the applicable requirements promulgated pursuant to and found at 40 CFR Parts 260-270.
47. At the time of the CEI, a used oil tank greater than 55 gallons in volume was located outside of the Mechanic Shop. The used oil tank was labeled “Clean Waste Oil.”
48. Thus, Respondent was in violation of 40 CFR § 279.22(c)(1), for failing to label or mark clearly the above-ground tanks used to store used oil with the words “Used Oil.”
49. At the time of the CEI, Respondent was storing used oil in a tank greater than 55 gallons in volume outside of the Mechanic Shop. The container was not double-walled and it was not stored on a surface with secondary containment which had the capacity to hold 110% of the volume of the container within the containment area.
50. Thus, Respondent was in violation of F.A.C. Chapter 62-710.401(6) for failing to store a container of used oil with a total capacity equal to or more than 55 gallons that is not double-walled on an oil-impermeable surface inside secondary containment, which has the capacity to hold 110% of the volume of the largest tank or container within the containment area.
51. At the time of the CEI, employees were not familiar with proper waste handling and emergency procedures.

52. Thus, Respondent was in violation of 40 CFR § 262.34(d)(5)(iii), for failing to ensure employees were thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
53. At the time of the CEI, Respondent did not have a basic contingency plan in accordance with 40 CFR § 262.34(d)(5).
54. Thus, Respondent was in violation of 40 CFR § 262.34(d)(5)(ii), for failing to post the following information next to the telephone: the name and telephone number of the emergency coordinator; the location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm.
55. At the time of the CEI, arrangements with local authorities had not been made.
56. Thus, Respondent was in violation of 40 CFR § 265.37, for failing to attempt to make arrangements with local authorities to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility, etc.

#### **V. TERMS OF AGREEMENT**

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

57. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in paragraphs 6, 7, and 8 above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
58. The Respondent neither admits nor denies the factual allegations or legal conclusions set out in this CA/FO.
59. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
60. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
61. Respondent waives any right it may have pursuant to 40 CFR § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.



62. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
63. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.
64. Each party will pay its own costs and attorney's fees.

#### A. DEMONSTRATION OF COMPLIANCE

65. Respondent has submitted to EPA, and EPA has approved, a document entitled "Demonstration of Compliance" describing how hazardous waste is currently managed at the facility, how Respondent has come into compliance for each violation cited in this CA/FO, and which indicates how Respondent will maintain compliance with applicable RCRA regulations.

#### B. PAYMENT OF CIVIL PENALTY

66. Respondent consents to the payment of a civil penalty in the amount of one hundred twenty five thousand dollars (\$125,000.00) within thirty (30) calendar days of the effective date of this CA/FO.
67. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, Pennsylvania 15251-7099

Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

and to:

Larry L. Lamberth, Acting Chief  
South Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4

61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

68. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c).
  - (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
  - (c) Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
69. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

#### C. PRELIMINARY CONTAMINATION ASSESSMENT ACTIONS

70. The mutual objectives of EPA and Respondent in entering into this CA/FO include evaluating and addressing all actual or potential threats to human health and the environment resulting from the release or potential release of contaminants to air, soil, sediments, groundwater or surface water at the Facility.
71. EPA identified several areas of concern during the December 7, 2006, RCRA CEI. These areas of concern and their associated media (soil, sediment, groundwater, surface water) include: soil (and potentially groundwater) beneath area used to store 28 5-gallon buckets of paint/solvent waste by Wheelabrator Building; soil (and potentially groundwater) beneath area used to store 22 5-gallon buckets by Paint Department Building; soil (and potentially groundwater) in overspray area of Paint Department yard area; soil and groundwater by Special Projects Building/Facility drinking water well and nearby area utilized for truck washing, in particular for areas containing obvious overspray from CARC painting operations; drinking water within

aerator associated with Facility drinking water wellhead located by Special Projects Building exhaust fan; soil (and potentially groundwater) beneath tank of High Sulfur Offroad Diesel by Mechanic Shop; soil (and potentially groundwater) by Detail Paint Trailer/Storage used for storage of paint waste on board(s); and, sediment (and potentially groundwater) and surface water associated with the storm water pond which receives run-off from the Silica Blast Area and is down gradient of other facility operations.

72. Respondent agrees to conduct sampling and analysis activities to evaluate and address all actual or potential threats to human health and the environment, including those areas of concern identified in Paragraph 71. The implementation of these activities shall be administered by FDEP pursuant to the FDEP Preliminary Contamination Assessment Actions attached hereto as Appendix A and incorporated by reference herein as if fully set out below. Any violation of the FDEP Preliminary Contamination Assessment Actions requirements attached hereto as Appendix A shall be a violation of this CA/FO.

#### D. NOTIFICATION AND CERTIFICATION

73. Unless otherwise specified, copies of all reports, correspondence, notices, or other submittals relating to or required under this CA/FO for the Preliminary Contamination Assessment Actions, shall be in writing, and reports shall also be submitted electronically on a CD, and shall be sent to:

Chief  
South Section  
RCRA & OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

and

Mr. Tim Bahr  
Hazardous Waste Administrator  
Florida Department of Environmental Protection  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, FL 32399

and

Mr. Richard S. Rachal, P.G.  
Section Supervisor

Waste Cleanup Section  
Florida Department of Environmental Protection  
7825 Baymeadows Way, Suite B200  
Jacksonville, FL 32256

74. All EPA notifications and other communications proposed under the CA/FO shall be sent to:

Mr. Jeff Yonge  
President  
Diversified Container Services, Inc.  
8831 Moncrief/Dinsmore Road  
Jacksonville, FL 32219

William L Finger  
Attorney At Law  
P.O. Box 351449  
Jacksonville, FL 32235-1449

75. All notices made by any party under this CA/FO shall be hand delivered or sent by certified mail (return receipt requested) or overnight courier, and shall be deemed effective upon receipt.
76. Any report or other document submitted by Respondent pursuant to this CA/FO which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CA/FO shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
77. The certification required by Paragraph 76 above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge and belief the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **VI. ADDITIONAL WORK**

78. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any FDEP-approved Preliminary Contamination Assessment Plan (PCAP), when such additional work is necessary to meet the objectives set forth in Paragraph 72. If EPA determines that such additional work is necessary, EPA shall request, in writing, that Respondent perform the additional work and shall specify the reasons for EPA's determination that the additional work is necessary. Within fifteen (15) calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. Any additional work proposed by Respondent in addition to the tasks included in any FDEP-approved PCAP, shall be subject to approval by EPA. Any additional work proposed by Respondent in lieu of the tasks included in any FDEP-approved PCAP, shall be subject to approval by FDEP. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. Such workplan shall be submitted within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a workplan, Respondent shall implement it in accordance with the schedule and provisions contained therein.
79. All additional work performed pursuant to this CA/FO shall be under the direction and supervision of a professional engineer registered in the State of Florida, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible.
- a. All documents proposing to modify the work approved by this CAFO submitted to EPA for review shall be signed, sealed, and certified by a Professional Engineer registered in the State of Florida, in accordance with Chapter 471, F.S. and Rule 62-730.220(7), F.A.C.
  - b. All submittals incorporating interpretation of geological data shall be signed and sealed by a Professional Geologist registered in the State of Florida in accordance with Chapter 492, F.S. and Rule 62-730.220(8), F.A.C."

80. Respondent shall follow the Florida DEP "Standard Operating Procedures for Field Activities" and the "Standard Operating Procedures for Laboratory Activities" and any other applicable Florida DEP Standard Operating Procedures ("SOPs") in effect at the time any additional work is being conducted. Respondent shall conform to the requirements of Rule 62-160 of the Florida Administrative Code.

#### **VII. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

81. Upon request, Respondent shall submit to EPA and FDEP the results of all sampling and/or tests or other data generated by agents, consultants, or contractors pursuant to this CA/FO.
82. Respondent shall notify EPA and FDEP in writing (including facsimile or e-mail, reply requested) at least seven (7) calendar days before commencing any field activities under this CA/FO, or as required in Appendix A, unless otherwise authorized by EPA on request by Respondent. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Contact and/or FDEP Project Contact, to commence such activities immediately. At the request of EPA and/or FDEP, Respondent shall provide or allow EPA and/or FDEP or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this CA/FO.
83. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA and FDEP pursuant to this CA/FO. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. §2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA and FDEP, the information may be made available to the public by EPA and FDEP without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

#### **VIII. ACCESS AND NOTIFICATION**

84. EPA and FDEP, their employees and authorized agents, including contractors and subcontractors, shall have access to the Respondent's facility at all reasonable times and in accordance with Respondent's reasonable internal safety and security procedures for the purpose of monitoring, investigating or verifying compliance with the terms of this CA/FO consistent with the authority set forth in Section 3007 of RCRA, 42 U.S.C. § 6907.
85. To the extent that work being performed pursuant to this CA/FO must be done beyond the facility property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this CA/FO from the present owner(s) of such property within thirty (30) calendar days of approval of any

workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent, EPA, FDEP, and their authorized representatives to access such property, and the payment of reasonable sums of money in consideration of granting access. Any such access agreement shall provide for access by EPA, FDEP, and their representatives. Respondent shall insure that the EPA and FDEP Project Contact's have a copy of any access agreement(s). In the event that agreements for access are not obtained within thirty (30) calendar days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify EPA and FDEP in writing within fourteen (14) calendar days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA and/or FDEP may, at their discretion, assist Respondent in obtaining access. In the event access is obtained, Respondent shall undertake the approved work on such property. The Respondent agrees to indemnify the United States as provided in Section XVI. Indemnification of the United States Government, for any and all claims arising from activities on such property.

86. If, at any time, Respondent, EPA or FDEP determines that contamination has migrated, or is suspected to have migrated, into any soil, groundwater, or surface water beyond the facility (other than for immediate and short-term emergency response actions), or to other areas within the facility controlled by different operators, at concentrations exceeding the most stringent applicable cleanup target levels, the Respondent shall notify EPA and FDEP within twenty-one (21) calendar days of the initial discovery, or the effective date of this CA/FO. This notification shall include a proposed notification letter to and a list of known and potentially affected property owners and operators, for EPA and/or FDEP approval, before the Respondent sends the notification letter to the parties listed below. Within 30 days of EPA and/or FDEP approval of the notification letter, the Respondent shall notify, by certified or registered mail, at a minimum the following list of people and agencies:
- a. all property owners onto which the contamination is known or suspected by the Respondent to have migrated;
  - b. the St. Johns River Water Management District;
  - c. the City of Jacksonville;
  - d. FDEP;
  - e. the local unit of the Department of Health; and
  - f. the Florida Department of Health, Bureau of Water and On-site Sewage Programs in Tallahassee at (850) 245-4070.

Copies of the notification letters and proof of receipt must be submitted to EPA and FDEP within 45 days of EPA's and/or FDEP's approval of the letter.

87. Nothing in this section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.
88. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective measures, including corrective measures beyond the facility boundary, notwithstanding the lack of access.

### **IX. RECORD PRESERVATION**

89. Except for documents that are covered by the attorney-client privilege or work product privilege, which are not covered by this Section, Respondent shall retain, during the pendency of this CA/FO and for a minimum of six (6) years after its termination, all data, records, and documents now in its possession or control or which come into its possession which relate in any way to this CA/FO or to hazardous waste management and/or disposal at the facility. Respondent shall notify EPA and FDEP in writing ninety (90) calendar days prior to the destruction of any such records, and shall provide EPA and FDEP with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this CA/FO and shall be addressed to:

Larry Lamberth, Acting Chief  
South Section  
RCRA & OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

and

Mr. Tim Bahr  
Hazardous Waste Administrator  
Florida Department of Environmental Protection  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, FL 32399

90. Respondent further agrees that within thirty (30) calendar days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this CA/FO, Respondent will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondent a copy of all documents produced pursuant to this CA/FO.



91. All documents pertaining to this CA/FO shall be stored by the Respondent in a centralized location at the facility to afford ease of access by EPA and FDEP and their representatives.

**X. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

92. If Respondent fails to comply with the provisions of this CA/FO, Respondent shall pay stipulated penalties as indicated below for each violation for each day during which the violation occurs:

<u>Period of Failure to Comply</u>	<u>Penalty Per Calendar Day Per Violation</u>
1st through 6th day	\$ 250
7th through 30th day	\$ 500
31st through 60th day	\$ 1,000
61st day and beyond	\$ 2,500

93. Subject to the other paragraphs in this section, all stipulated penalties begin to accrue on the day that complete performance is due, or a violation occurs, and continue to accrue through the final day of correction of the noncompliance, or the day EPA submits its Statement of Position to the Director, RCRA Division, EPA Region 4, pursuant to Section XI. Dispute Resolution, of this CA/FO, whichever occurs first. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this CA/FO which derive from Respondent's independent and distinguishable acts and/or omissions. Issuance and receipt of a notice of noncompliance is not a condition precedent to the accrual of stipulated penalties.
94. Accrued stipulated penalties shall become due and payable thirty (30) calendar days after demand by EPA for their payment. The stipulated penalty demanded shall be paid by check payable to the "**Treasurer, United States of America**". The facility name and docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

U.S. Environmental Protection Agency  
 Cincinnati Accounting Operations  
 Mellon Lockbox 371099M  
 Pittsburgh, Pennsylvania 15251-7099

Respondent shall provide a copy of any such cashier's or certified check(s) to the Regional Hearing Clerk and to the Chief, South Section, RCRA & OPA Enforcement and Compliance Branch, at the addresses provided in Paragraph 67 above.

95. If any payment is not received within thirty (30) calendar days of being due, interest, handling charges and late-payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c).

96. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XI. Dispute Resolution. Except as provided in Section XI. Dispute Resolution, the stipulated penalties in dispute shall continue to accrue in accordance with Paragraph 93, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to EPA within seven (7) calendar days of receipt of such resolution in accordance with Paragraph 94 of this CA/FO. EPA in its discretion may waive or reduce any stipulated penalties assessed.
97. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this CA/FO.
98. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this CA/FO. However, all stipulated penalties which are paid by Respondent shall be off-set against any and all penalties for the same violation which EPA may be entitled to collect as a result of other enforcement action.
99. No payments under this section shall be tax deductible for federal tax purposes.

## **XI. DISPUTE RESOLUTION**

100. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this CA/FO.
101. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by EPA pursuant to this CA/FO, Respondent shall notify EPA of the dispute (Notice of Dispute) in writing within fourteen (14) calendar days of Respondent's receipt of the Initial Written decision. The Notice of Dispute shall be mailed to:

Chief  
South Section  
RCRA & OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

102. Respondent and EPA shall attempt to resolve the dispute informally. The period for informal negotiations shall not exceed twenty-one (21) calendar days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the

dispute (Negotiation Period). EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent as long as Respondent's request for a conference will not extend the Negotiation Period. The Negotiation Period may be modified by written agreement of the parties to the dispute.

103. If the parties cannot resolve the dispute informally under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty-one (21) calendar days after the conclusion of the informal Negotiation Period, Respondent invokes the formal dispute resolution procedures by serving on EPA at the address specified in Paragraph 73 above, and to the Director of the RCRA Division, EPA Region 4, a written Statement of Position on the matter in dispute, including, but not limited to, the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this CA/FO, the basis for Respondent's position, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue.
104. Within fourteen (14) calendar days after receipt of Respondent's Statement of Position, EPA will serve on Respondent and to the Director of the RCRA Division, EPA Region 4, its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by EPA.
105. Following receipt of both Statements of Position, the Director of the RCRA Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. Such decision shall not be appealed further, and shall be incorporated into and become an enforceable element of this CA/FO.
106. During the pendency of the dispute resolution process, unless there has been a written modification by EPA of a compliance date, or excusable delay as defined in Section XII, Force Majeure, the existence of a dispute as defined in this Section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CA/FO which is not directly in dispute. However, payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue in accordance with Paragraph 93, unless Respondent prevails on the disputed issue, or the final decision maker, at his or her discretion, reduces the amount of the accrued penalty upon a finding that Respondent had a good faith basis for invoking the dispute resolution process. Stipulated penalties shall be assessed and paid as provided in Paragraph 92 herein.

## **XII. FORCE MAJEURE AND EXCUSABLE DELAY**

107. Force majeure, for purposes of this CA/FO, is defined as any event arising from causes not reasonably foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CA/FO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this CA/FO; financial inability to complete the work; minor precipitation events; or changed circumstances arising out of sale, lease, or transfer of Respondent's interest in any and/or all portions of the Facility.
108. If any event occurs or has occurred that may delay the performance of any obligation under this CA/FO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Contact or, in his or her absence, his or her Section Chief or, in the event both of EPA's designated representatives are unavailable, the Director of the RCRA Division, EPA Region 4, within seventy-two (72) hours of when Respondent first knew or should have known that the event might cause a delay. Within five (5) calendar days thereafter, Respondent shall provide to EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event, unless such failure is waived by EPA at its discretion. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
109. If EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CAFO that is affected by the force majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure

event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

110. If EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XI. Dispute Resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

### **XIII. RESERVATION OF RIGHTS**

111. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
112. If EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this CA/FO for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
113. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
114. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
115. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

#### **XIV. OTHER CLAIMS**

116. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

#### **XV. OTHER APPLICABLE LAWS**

117. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

118. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising solely from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this CA/FO. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

#### **XVII. MODIFICATION**

119. This CA/FO may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this CA/FO and attached as an appendix.
120. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing.

#### **XVIII. SEVERABILITY**

121. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances

and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

### **XIX. PARTIES BOUND**

122. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
123. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
124. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

### **XX. SERVICE OF DOCUMENTS**

125. A copy of any documents that Respondent files in this action, other than those referenced in paragraph 73, shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Mita Ghosh  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909  
(404) 562-9532

126. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is authorized to receive service for the Respondent in this proceeding:

William Finger  
Attorney at Law  
P.O. Box 351449  
Jacksonville, FL 32235-1449  
(904) 565-1234

### **XXI. TERMINATION AND SATISFACTION**

127. The provisions of this CA/FO shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). EPA will prepare the

Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this CA/FO, including any additional tasks determined by EPA to be required pursuant to this CA/FO, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (1) to preserve all records and (2) to recognize EPA's reservation of rights, in accordance with this CA/FO after the rest of the CA/FO is satisfactorily completed.

(Effective date and signatures contained on the next page.)

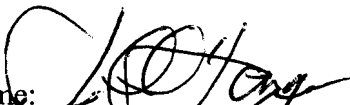


**XXII. EFFECTIVE DATE**

128. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

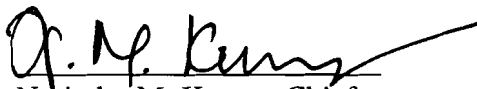
**AGREED AND CONSENTED TO:**

**Diversified Container Services, Inc.**

By:   
Name: \_\_\_\_\_  
Title: OWNER/PRESIDENT

Dated: 20 AUG 2007  
(Typed or Printed)  
(Typed or Printed)

**U.S. Environmental Protection Agency**

By:   
Narindar M. Kumar, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

Dated: 8/29/07

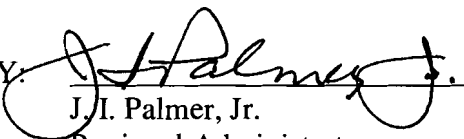
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2007-4006(b)
	)	
Diversified Container Services, Inc.	)	Proceeding under Section 3008(a)
8831 Moncrief/Dinsmore Road	)	of the Resource Conservation and
Jacksonville, Florida 32219	)	Recovery Act, 42 U.S.C. § 6928(a)
EPA ID No.: FLR 000 134 221	)	
	)	
	)	
Respondent.	)	
	)	

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 CFR Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 CFR §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 14<sup>th</sup> day of Sept., 2007.

BY:   
J.I. Palmer, Jr.  
Regional Administrator  
EPA Region 4

**CERTIFICATE OF SERVICE**

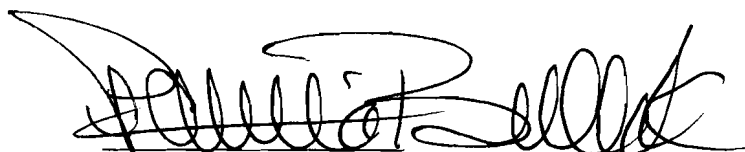
I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Diversified Container Services, Inc., Docket Number: RCRA-04-2007-4006(b), on SEP 17 2007 2007, and on SEP 17 2007 2007, served the parties listed below in the manner indicated:

Mita Ghosh (Via EPA's internal mail)  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

Mr. Jeff Yonge (Via Certified Mail - Return Receipt Requested)  
President  
Diversified Container Services, Inc.  
8831 Moncrief/Dinsmore Road  
Jacksonville, FL 32219

Date:

9-17-07



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

## **APPENDIX A**

1. Respondent shall implement the “Preliminary Contamination Assessment Actions” attached and incorporated herein as Exhibit I within the time frames set forth therein.
2. In the event the Preliminary Contamination Assessment described in Exhibit I reveals the presence of contamination in the soil, sediment, surface and/or ground water in violation of the Florida Department of Environmental Protection’s (the Department’s) water quality standards or minimum criteria, or reveals the presence of contaminants which may reasonably be expected to cause pollution of the surface and/or ground water of the state in excess of such standards or criteria, Respondent shall initiate and complete site rehabilitation of the property described in the CA/FO, and any property onto which contamination has migrated from that property, in accordance with the provisions of Chapters 62-780 and 62-777, F.A.C.
3. Immediately upon the effective date of the CA/FO, Respondent shall meet all time frames and requirements set forth in Exhibits I and Chapters 62-780 and 62-777, F.A.C., regarding the preparation and submittal of appropriate technical documents.
4. Respondent shall provide within a reasonable time at its expense, a permanent safe drinking water supply meeting all drinking water standards set forth in Sections 62-3 and 62-550, FAC to replace any potable water well that is shown by chemical and hydrogeological analyses to be contaminated by the Respondent’s operations.
5. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this CA/FO and the rules and statutes of the Department.

## Exhibit I

### PRELIMINARY CONTAMINATION ASSESSMENT ACTIONS

1. Within 60 days of the effective date of this CA/FO, Respondent shall submit to the Florida Department of Environmental Protection (the Department) documents certifying that the organization(s) and laboratory(s) performing the sampling and analysis have a DEPARTMENT APPROVED Comprehensive Quality Assurance Plan (Comp QAP) in which they are approved for the sampling and analysis intended to be used for the assessment of the site. The documentation shall, at a minimum, contain the TITLE PAGE and TABLE OF CONTENTS of the approved Comp QAP meeting the requirements of Rule 62-160, F.A.C. If the organization(s) or laboratory(s) performing the sampling and analysis change at any time during the assessment, documentation of their DEPARTMENT APPROVED Comp QAP will be required. If at any time sampling and analysis are to be conducted which are not in the Approved Comp QAP, documentation of amendments and approvals pursuant to Rule 62-160.210, F.A.C., shall be required.

2. Within 60 days of the effective date of this CA/FO incorporating these Preliminary Contamination Assessment Actions, Respondent shall submit a Preliminary Contamination Assessment Plan ("PCAP") to the Department. Applicable portions of the PCAP shall be signed and sealed by an appropriate professional. The PCAP shall describe the tasks that Respondent proposes to perform in order to determine whether the soil, sediment, surface water or ground water are contaminated at Respondent's facility; and, if so, whether such contamination has resulted in a violation of the water quality standards and minimum criteria established in Florida Administrative Code Chapter 62-520 and 62-302 or constitutes a risk to the public health, the environment or the public welfare. The PCAP shall include a time schedule for each task so that all tasks can be completed and a Preliminary Contamination Assessment Report ("PCAR") can be submitted to the Department within 90 days of approval of the PCAP by the Department.

3. The PCAP shall include provisions for the installation and sampling of, in most cases, a minimum of four monitor wells to determine the groundwater quality and flow direction at the site. Proposal of fewer wells or an alternate well configuration is subject to Department approval. Provision to sample surface waters, sediments and soils shall be included as necessary.

A. One of the wells shall be located in the area suspected of greatest contamination and two wells shall be located downgradient of the area suspected of highest contamination.

B. One of the wells shall be an unaffected background well.

C. The wells, surface waters, sediments and soils, as applicable, shall be sampled and analyzed for the following parameters with the listed method;

(1) priority pollutant metals using DEP approved Methods;

(2) priority pollutant organic chemicals using EPA methods 624/8240 and 625/8250 or 8270;

(3) all non-priority pollutant organic chemicals with peaks greater than 10 micrograms per liter (ug/l) using EPA methods 624/8240 and 625/8250 or 8270;

(4) pesticides and herbicides using EPA methods 8080, 8140, 8150 or 625/8250 or 8270, if applicable, or other Department approved methods for pesticides and herbicides for which the listed methods are not applicable; and

(5) others, as applicable.

Proposal of alternate analytical methods is subject to Department approval. The number of contaminants to be analyzed may be reduced if Respondent can demonstrate to the Department's satisfaction that the contaminants proposed to be deleted from the list cannot be attributed to any activities that have taken place at Respondent's facility. The Department shall submit written notification to the Respondent if the number can be reduced.

4. The PCAP shall include provisions for investigation of the following conditions, as applicable, at the contamination site and the area surrounding the contamination site:

A. The presence and thickness of any free product at the site;

B. The presence of soil contamination at the site;

C. The aquifers present beneath the site and their Chapter 62-502, F.A.C., groundwater classification;

D. The number and locations of all public and private potable supply wells within a 1/2 mile radius of the site;

E. The presence of surface waters of the State within a 1/2 mile radius of the site and, if applicable, their Rule 62-302, F.A.C., classification; and

F. The geology and hydrogeology of the site focusing on aquifers and confining units which are present, the potential for movement of contaminants both horizontally and vertically, zones that are likely to be affected, and actual and potential uses of the groundwater as a resource.

5. The PCAP shall contain the following site specific information;

A. Proposed well construction details including methods and materials, well installation depths and screened intervals and well development procedures;

B. A description of methods and equipment to be used to quantify soil and sediment contamination;

C. A description of water sampling methods, including names of sampling personnel, procedures and equipment;

D. Name of laboratory to be used for analytical work;

E. The parameters to be analyzed for, the analytical methods to be used and the detection limits of these analytical methods;

F. Site map depicting monitoring well locations and other proposed sampling sites and justification for their selection; and

G. A detailed site history including: a description of past and present property and/or facility owners; a description of past and present operations including those which involve the storage, use, processing or manufacture of materials which may be potential pollution sources; a description of all products used or manufactured and of all by-products and wastes (including waste constituents) generated during the life of the facility; a summary of current and past environmental permits and enforcement actions; a

summary of known spills or releases of materials which may be potential pollution sources; and an inventory of potential pollution sources within 0.25 (one quarter) mile.

6. The Department shall review the PCAP and provide Respondent with a written response to the proposal. In the event that additional information is necessary for the Department to evaluate the PCAP, the Department shall make a written request to Respondent for the information and Respondent shall provide the requested information within 20 days from receipt of said request. The PCAP shall incorporate all required modifications to the PCAP identified by the Department. Any action taken by Respondent with regard to the implementation of the PCAP prior to the Respondent receiving written notification from the Department that the PCAP has been approved shall be at Respondent's risk.

7. Within 90 days of the Department's approval of the PCAP (unless a written time extension is granted by the Department), Respondent shall submit a written Preliminary Contamination Assessment Report ("PCAR") to the Department. Applicable portions of the PCAR shall be signed and sealed by an appropriate professional. The PCAR shall:

- A. Summarize and analyze all "PCAP" tasks;
- B. Include, but not be limited to, the following tables and figures:
  - (1) A table with well construction details, top of casing elevation, depth to water measurements, and water elevations;
  - (2) A site map showing water elevations, water table contours and the groundwater flow direction for each aquifer monitored for each sampling period;
  - (3) A table with water quality information for all monitor wells;
  - (4) Site maps showing contaminant concentrations and contours of the contaminants; and
  - (5) Cross sections depicting the geology of the site at least to the top of the confining unit. In general there should be at least one north to south cross section and one east to west cross section.
- C. Include copies of field notes pertaining to field procedures, particularly of data collection procedures; and
- D. Specify results and conclusions regarding the objectives of the Preliminary Contamination Assessment;
- E. Provide the following quality assurance data along with the analytical data from all media:
  - (1) dates of sample collection, sample preparation including extraction and sample analysis;
  - (2) the detection limits for these analyses;
  - (3) the results from the analyses of field quality control samples; including field equipments, trip blanks and duplicates;
  - (4) the results from reagent water blanks run on that day (5% of samples run, minimum);
  - (5) the spike and surrogate percent recoveries for the data set;
  - (6) the actual chromatograms, if requested by the Department.
  - (7) any other QA/QC information Department deems necessary to evaluate validity of the submitted data.

F. Identify, to the extent possible, the source(s), extent, and concentrations of contaminants, and the existence of any imminent hazards.

8. The Department shall review the PCAR and determine whether it is adequate to meet the objectives of the PCAP. In the event that additional information is necessary to evaluate the PCAR, the Department shall make a written request and Respondent shall provide all requested information within 20 days of receipt of said request.

9. Respondent shall provide notification to the Department at least twenty (20) days prior to the installation or sampling of any monitoring wells, and shall allow Department personnel the opportunity to observe installation and sampling and to take split samples. All necessary approvals must be obtained from the appropriate water management district before any wells are installed. Raw data shall be exchanged between Respondent and the Department as soon as the data is available.

10. The Respondent is required to comply with all local, state and federal regulations and to obtain any necessary approvals from local, state and federal authorities in carrying out these assessment actions.

11. If the Department's review of the PCAR indicates that the soil, sediments, surface water or ground water is contaminated, or constitutes a risk to the public health, the environment or the public welfare, or if the Department rejects the PCAP or PCAR for not meeting the objectives of analyzing or reporting on the analysis of the contaminants that are the subject of the assessment, the Department reserves the right to do any or all of the following:

A. Seek further administrative relief through the filing of a Notice of Violation or entry of a Consent Order which requires Respondent to conduct further assessment and clean-up at its facility;

B. File suit for injunctive relief, civil penalties, damages and expenses; or

C. Perform the necessary corrective actions at Respondent's facility and recover the costs of such actions from Respondent.

12. If the Department's review of the PCAR indicates that the site is not contaminated and does not constitute a risk to the public health, the environment or the public welfare, the Department will so notify the Respondent in writing.