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

In Re:	)	
	)	
Neville Chemical Company	)	**Docket No. RCRA-03-2008-0358**
2800 Neville Road	)	
Pittsburgh, PA 15225-1496,	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
RESPONDENT.	)	**Resource Conservation and**
	)	**Recovery Act, as amended,**
EPA Facility I.D. #PAD004334157	)	**42 U.S.C. § 6928(a) and (g)**

FINAL ORDER

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

NOW, THEREFORE, 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*, by 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, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of Thirty Seven Thousand Four Hundred and Eleven Dollars ($37,411.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C. § 6928(a), **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Thirty Seven Thousand Four Hundred and Eleven Dollars ($37,411.00) in accordance with the provisions of the foregoing Consent Agreement and comply timely with each of the additional terms and conditions thereof.

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

5/20/08
Date

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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	)	**Recovery Act, as amended,**
EPA Facility I.D. #PAD004334157	)	**42 U.S.C. § 6928(a) and (g)**

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7004 2890 0000 5075 5022), to the following person at the following address:

Colleen Grace Donofrio, Esquire
Babst, Calland, Clements & Zomnir, P.C.
380-A Tylers Mill Road
Sewell, New Jersey 08080

AUG 2 6 2008
Date

A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480

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	)	**Recovery Act, as amended,**
EPA Facility I.D. #PAD004334157	)	**42 U.S.C. § 6928(a) and (g)**

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division (formerly the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("Complainant"), and Neville Chemical Company ("Neville Chemical" or "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 ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commences and concludes this administrative proceeding against Neville Chemical.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR")

were federally authorized by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on two separate occasions (September 26, 2000 and January 20, 2004). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000 and March 22, 2004, respectively. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect as of June 28, 2001 for the March 22, 2004 PaHWR authorization. The 2004 authorized PaHWR do not make any changes to the November 27, 2000 PaHWR that are relevant to the violations alleged herein.

5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at its facility located at 2800 Neville Road, Pittsburgh, PA 15225-1496 (the "Facility").

6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated November 2, 2007, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP"), 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

7. Respondent admits the jurisdictional allegations set forth in this CAFO.

8. Respondent neither admits nor denies the specific factual allegations contained in this CAFO, except as provided in Paragraph 7, immediately above.

9. 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 the CAFO.

10. For the 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.

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

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

13. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.

14. This CAFO shall not relieve Respondent of its obligation 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. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. 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.

16. Respondent is a Pennsylvania corporation and is 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 25 PA Code Section 260a.10.

17. The Facility identified above, and further described below, is a hazardous waste storage "facility" as that term is defined in 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.

18. At all times relevant to this Consent Agreement, Respondent was and is the "owner" and "operator" of the Facility, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

19. The Respondent's Facility, located at 2800 Neville Road, Pittsburgh, PA 15225-1496, is a resin manufacturing facility.

20. As described below, Respondent is and, at all times relevant to this CAFO has been, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

21. At all times relevant to this CAFO and as described below, Respondent has engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]", "tank[s]" and "tank system[s]" (including "Tank 67" and "Tank 1008") at the Facility, as the former term is defined in 25 PA Code Section 260a.10 and as the latter terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

22. On September 6, 2007, duly authorized representatives of EPA conducted a compliance evaluation inspection (the "Inspection") at the Facility to assess the Respondent's compliance with federally authorized PaHWR requirements.

23. On January 17, 2008 EPA sent a Notice of Noncompliance and Request to Show Cause letter ("NON") to the Respondent advising Respondent of EPA's preliminary findings of PaHWR 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 PaHWR compliance at the Facility.

24. In response to the NON, Respondent provided EPA with supplemental information by correspondence dated February 13, 2008 and March 17, 2008, respectively, which EPA reviewed and addressed via correspondence dated April 1, 2008.

25. Respondent thereafter provided EPA with additional information via correspondence dated April 21, 2008, which EPA reviewed and addressed via correspondence dated May 1, 2008.

26. On the basis of the Facility Inspection and a review of the supplemental information provided to EPA by Respondent in response to the NON, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

COUNT I
(*Operating Without a Permit*)

27. The allegations of Paragraphs 1 through 26 of this Consent Agreement are incorporated herein by reference.

28. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, 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. Respondent never has been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not, at any time, have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

30. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:

    a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(l), as incorporated by reference into 25 Pa. Code § 262a.10, which requires that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of Subparts I, AA, BB, and CC of 40 C.F.R. Part 265. Subpart CC of 40 C.F.R. Part 265 includes the following requirements to control air pollutant emissions from containers:

        i. Pursuant to 40 C.F.R. § 265.1080(a), and with exceptions not herein applicable, the requirements of 40 C.F.R. Part 265, Subpart CC "apply to the owners and operators of all facilities that treat, store, or dispose of hazardous waste in . . . containers subject to . . . subpart . . . I" of 40 C.F.R. Part 265.

        ii. 40 C.F.R. § 265.1083(a) provides that its requirements apply "to the management of hazardous waste in tanks, surface impoundments, and containers subject to this [40 C.F.R. Part 265] subpart [CC].

        iii. 40 C.F.R. § 265.1083(b) provides that "[t]he owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in [40 C.F.R.] §§ 265.1085 through 265.1088 of this [40 C.F.R. Part 265] subpart [CC], as applicable to the hazardous waste management unit", with exceptions not herein applicable.

iv. 40 C.F.R. § 265.1087(a) provides that "[t]he provisions of this [40 C.F.R.] section [265.1087] apply to the control of air pollutant emissions from containers for which [40 C.F.R.] § 265.1083(b) of this [40 C.F.R. Part 265] subpart [CC] references the use of this section for such air emission control."

v. 40 C.F.R. § 265.1087(b)(1) provides, in relevant part and with exceptions not herein applicable, that "[t]he owner or operator shall control air pollutant emissions from each container subject to this [40 C.F.R.] section [265.1087] in accordance with the following requirements, as applicable to the container", including those set forth in 40 C.F.R. § 265.1087(b)(1)(ii), which further provides that "[f]or a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section."

vi. Pursuant to 40 C.F.R. § 265.1087(c)(3)(I) through (v), "[w]henever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:" when adding or removing hazardous waste or other materials from the container, accessing the inside of the container to conduct any routine activity other than transfer of hazardous waste, opening a pressure relief device which vents to the atmosphere for the purpose of maintaining the internal container pressure in accordance with container design specifications, or opening a safety device for the purpose of avoiding an unsafe condition.

b. the condition set forth at 40 C.F.R. § 262.34(a)(1)(ii), as incorporated by reference into 25 Pa. Code § 262a.10, which requires that when hazardous waste is placed in tanks, the generator must comply with the applicable requirements of Subparts J, AA, BB, and CC of 40 C.F.R. Part 265, except 40 C.F.R. §§ 265.197(c) and 265.200. Subparts BB and J of 40 C.F.R. Part 265 include the following requirements:

i. 40 C.F.R. § 265.1050(a) provides, with exceptions not herein applicable, that the regulations in 40 C.F.R. Part 265, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes.

ii. 40 C.F.R. § 265.1050(b) provides, in relevant part and with exceptions not

herein applicable, that 40 C.F.R. Part 265, Subpart BB, "applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: (1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6."

iii. 40 C.F.R. § 265.1050(c) provides that: "[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment."

iv. 40 C.F.R. § 265.1051 provides, in relevant part, that: "[a]s used in this [40 C.F.R. Part 265] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .", which section defines the term "*equipment*" to mean and include "each . . . flange or other connector . . .".

v. 40 C.F.R. § 265.190 provides, with exceptions and exemptions not herein applicable, that the requirements of 40 C.F.R. Part 265, Subpart J, "apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste. . .".

vi. 40 C.F.R. § 265.193, with exceptions not herein applicable, provides for the containment and detection of releases from tank systems, including the secondary containment requirements of 40 C.F.R. § 265.193(d)(1), which provides that: "(d) Secondary containment for tanks must include one or more of the following devices: (1) A liner (external to the tank)."

vii. 40 C.F.R. § 265.193 further provides, in pertinent part and with exceptions not herein applicable, that:

> (e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements: (1) External liner systems must be: * * * (iii) Free of cracks or gaps; and (iv) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

c. the condition set forth at 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10, which requires that each container and tank must be clearly marked with the words "Hazardous Waste".

d. the condition set forth at 40 C.F.R. § 262.34(a)(4), as incorporated by reference into 25 Pa. Code § 262a.10, which requires that the generator of hazardous waste comply with the requirements for owners and operators in Subparts C and D in 40 C.F.R. Part 265 and with the requirements of 40 C.F.R. §§ 265.16 and 268.7(a)(5). Subpart C of 40 C.F.R. Part 265 includes the following requirements:

i. Pursuant to 40 C.F.R. § 265.31, facilities must be maintained and operated 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, or surface water which could threaten human health or the environment.

31. Respondent failed to comply with the conditions, identified in Paragraph 30, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section for each of the following specific reasons:

a. Respondent stored hazardous waste in Facility Tank 67 from at least June 11, 2007 through September 11, 2007, a time period that is beyond the 90 day period of the exemption provided in 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10;

b. At the time of the September 6, 2007 Facility Inspection, Respondent was storing D001/D018 hazardous waste (*i.e.*, remediation waste oil) at the Tote-Pumping Area of the Facility in four double-walled 200-gallon tote "containers" that each: (I) had a design capacity greater than 0.46 m^3; (ii) were not in light material service; and (iii) were hazardous waste management units subject to the use and management of container requirements of 40 C.F.R. Part 265, Subpart I, the air emission applicability standards for containers of 40 C.F.R. Part 265, Subpart CC, as set forth at 40 C.F.R. § 265.1080 and, therefore, the Level 1 control requirements for containers set forth at 40 C.F.R. §§ 265.1083(b) and 265.1087(c). At the time of such Inspection, the non-spring-loaded bunghole covers or caps of each of these four tote containers were not in a secure, closed position at a time when Respondent was neither adding or removing hazardous waste or other materials from any of the containers, accessing inside any container

to perform an inspection or conduct any routine activity other than transfer of hazardous waste, opening any pressure relief device in order to maintain internal container pressure in accordance with design specifications, opening a pressure relief device which vents to the atmosphere for the purpose of maintaining the internal pressure in accordance with container design specifications or opening a safety device for the purpose of avoiding an unsafe condition, in accordance with the requirements of 40 C.F.R. § 265.1087(c)(3). Respondent stored hazardous waste in containers that were not being managed in accordance with the requirements of 40 C.F.R. Part 265, Subpart CC, as per the exemption requirement of 40 C.F.R. § 262.34(a)(1)(I), as incorporated by reference into 25 Pa. Code § 262a.10;

c. At the time of the September 6, 2007 Facility Inspection, Respondent stored and managed hazardous wastes with organic concentrations of at least 10 percent by weight in Facility Tanks 67 and 1008, respectively, which tanks are not recycling units under the provisions of 40 C.F.R. § 261.6 and are hazardous waste management units subject to the 40 C.F.R. Part 265, Subpart BB, air emission equipment leak applicability standards of 40 C.F.R. § 265.1050(a) and (b) (via application of either 40 C.F.R. § 265.1050(b)(1) or (3)) and, therefore, the equipment marking requirements of 40 C.F.R. § 265.1050(c). At the time of the Facility Inspection, flanges associated with Tank 67 and Tank 1008 piping, which routinely contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight and which are 40 C.F.R. Part 265, Subpart BB regulated "equipment" within the meaning and definition of 40 C.F.R. § 265.1051, were not marked in a manner by which they could be distinguished readily from other pieces of equipment, in accordance with the requirements of 40 C.F.R. § 265.1050(c). Respondent failed to mark equipment that was subject to air emission standards for equipment leak requirements in accordance with applicable requirements of 40 C.F.R. Part 265, Subpart BB, as per the exemption requirement of 40 C.F.R. § 262.34(a)(1)(ii), as incorporated by reference into 25 Pa. Code § 262a.10;

d. At the time of the September 6, 2007 Facility Inspection, Respondent was storing D001 hazardous waste in Facility Tank 67, which sits inside a concrete secondary containment basin (*i.e.*, a liner) with approximately two-foot-high concrete curbing. At the time of such Inspection, cracks were present in, and extended completely through, the width of the North and South walls of the Tank 67 secondary containment curbing and no impermeable coating, sealant or lining had been applied to such concrete curbing, such that it was neither free of cracks or gaps nor capable of preventing lateral as well as vertical migration of the waste, in accordance with the requirements of 40 C.F.R. § 265.193(e)(1)(iii) and (iv).

Respondent stored hazardous waste in a tank whose secondary containment system was not in compliance with applicable requirements of 40 C.F.R. Part 265, Subpart J, as per the exemption requirement of 40 C.F.R. § 262.34(a)(1)(ii), as incorporated by reference into 25 Pa. Code § 262a.10;

e. At the time of the September 6, 2007 Facility Inspection, Respondent was storing D008 hazardous paint waste in the area next to, and below, the "#15 Still" area of the Facility in a 55-gallon container that was not labeled or marked clearly with the words "Hazardous Waste", as per the exemption requirement of 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10; and

f. At the time of the September 6, 2007 Facility Inspection, an oily spillage of D001/ D018 remediation well oil hazardous waste was present on the concrete pavement of the Facility's "Tote-Pumping Area", adjacent to totes used to collect such hazardous waste prior to transport into Facility Tank 1008. At such time, D008 paint and blast media hazardous waste from the recent stripping of a tank also was present on the ground surrounding twenty-two 55-gallon containers that were dated and marked as containing "Hazardous Waste" and located next to, and below, the "#15 Still" of the Facility. At the time of the Inspection, Respondent was not maintaining and operating its Facility so as to minimize the possibility of a fire, explosion, or a unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in accordance with 40 C.F.R. § 265.31. Respondent thus failed to comply with an applicable requirement of 40 C.F.R. Part 265, Subpart C, as per the exemption requirement of 40 C.F.R. § 262.34(a)(4), as incorporated by reference into 25 Pa. Code § 262a.10.

32. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II
(*Failure to Comply with Air Emission Standards for Containers*)

33. The allegations of Paragraphs 1 through 32, above, are incorporated herein by reference as though fully set forth at length.

34. 25 PA Code Section 264a.1, which incorporates by reference the air emission applicability standards for tanks, surface impoundments and containers of 40 C.F.R. § 264.1080, provides, in relevant and pertinent part, and with exceptions not herein

applicable, that the requirements of 40 C.F.R. Part 264, Subpart CC "apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in . . . containers subject to . . . subpart . . . I" of 40 C.F.R. Part 264.

35. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. Part 264, Subpart CC, air emission standards for tanks, surface impoundments and containers, provides, in relevant and pertinent part, as follows:

a. 40 C.F.R. § 264.1082(a) "applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this [40 C.F.R. Part 264] subpart [CC].

b. 40 C.F.R. § 264.1082(b) provides that "[t]he owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in [40 C.F.R.] §§ 264.1084 through 264.1087 of this [40 C.F.R. Part 264] subpart [CC], as applicable to the hazardous waste management unit", with exceptions not herein applicable.

c. 40 C.F.R. § 264.1086(a) provides that "[t]he provisions of this [40 C.F.R.] section [264.1086] apply to the control of air pollutant emissions from containers for which [40 C.F.R.] § 264.1082(b) of this [40 C.F.R. Part 264] subpart [CC] references the use of this section for such air emission control."

d. 40 C.F.R. § 264.1086(b) provides, in relevant part and with exceptions not herein applicable, that "[t]he owner or operator shall control air pollutant emissions from each container subject to this [40 C.F.R.] section [264.1086] in accordance with the following requirements, as applicable to the container", including those set forth in 40 C.F.R. § 264.1086(b)(ii), which further provides that "[f]or a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section."

e. 40 C.F.R. § 264.1086(c)(1)(ii) provides, in relevant part, that a container using Container Level 1 controls includes "[a] container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container."

f. 40 C.F.R. § 264.1086(c)(3) provides, in relevant part, that: "[w]henever a hazardous waste is in a container using Container Level 1 controls, the owner or

operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container . . . . * * *

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container . . . .* * *

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. . . . * * *

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. . . .* * *

(v) Opening of a safety device, as defined in 40 C.F.R. [§] 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition."

36. At the time of the September 6, 2007 Facility Inspection and as alleged in Paragraph 31, above:

a. Respondent was storing D001/D018 hazardous waste at the Tote-Pumping Area of the Facility in four double-walled 200-gallon tote containers that each had a design capacity greater than 0.46 m^3, were not in light material service and were subject to the 40 C.F.R. § 264.1086(c) Level 1 control requirements for containers;

b. the non-spring-loaded bunghole covers, or caps, of such four containers were not in a secure, closed position at a time when Respondent was neither adding nor removing hazardous waste or other materials from the container, accessing inside the container to perform an inspection or conduct any routine activity other than transfer of hazardous waste, opening any pressure relief device which vents to the atmosphere during normal operations in order to maintain internal container pressure in accordance with its design specifications or opening a safety device for the purpose of avoiding an unsafe condition, in accordance with the requirements

of 40 C.F.R. § 264.1086(c)(3); and

c. such containers were not being managed in accordance with the requirements of 40 C.F.R. Part 265, Subpart CC, as per the exemption requirement of 40 C.F.R. § 262.34(a)(1)(I), as incorporated by reference into 25 Pa. Code § 262a.10, and were subject to the requirements of 40 C.F.R. Part 264, Subpart I, pertaining to the use and management of containers.

37. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.1086(c)(3), by storing hazardous waste in containers that were not being managed in accordance with applicable Container Level 1 control requirements.

COUNT III
(*Failure to Comply with Air Emission Standards for Equipment Leaks*)

38. The allegations of Paragraphs 1 through 37, above, are incorporated herein by reference as though fully set forth at length.

39. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. §§ 264.1050 (Applicability) and 264.1051, provides, in relevant and pertinent part and with exceptions not herein applicable, as follows:

a. 40 C.F.R. § 264.1050(a) provides, with exceptions not herein applicable, that the regulations in 40 C.F.R. Part 264, Subpart BB, apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes;

b. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions not herein applicable, that 40 C.F.R. Part 264, Subpart BB, "applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following: "(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or . . . (3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6."; and

c. 40 C.F.R. § 264.1050(d) provides that: "[e]ach piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment."

d. 40 C.F.R. § 264.1051 provides, in relevant part, that: "[a]s used in this [40 C.F.R. Part 264] subpart [BB], all terms shall have the meaning given them in [40 C.F.R.] § 264.1031 . . .", which section defines the term "*equipment*" to mean and include "each . . . flange or other connector . . . ."

40. At the time of the September 6, 2007 Facility Inspection and as alleged in Paragraph 31, above:

a. Respondent stored hazardous wastes with organic concentrations of at least 10 percent by weight in Facility Tanks 67 and 1008, respectively, which tanks were subject to the permitting requirements of 40 C.F.R. Part 270 because of the Respondent's failure to comply with the conditions that are identified in Paragraph 30, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10;

b. Facility Tanks 67 and 1008 each included associated piping and connector flanges which routinely contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight; and

c. Flanges associated with Tank 67 and 1008 piping, which routinely contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight, were not marked in a manner by which they could be distinguished readily from other pieces of equipment, in accordance with the requirements of 40 C.F.R. § 264.1050(d).

41. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.1050(d), by failing to mark equipment that was subject to the air emission standards for equipment leaks of 40 C.F.R. Part 264, Subpart BB, in a manner by which they could be distinguished readily from other pieces of equipment.

COUNT IV
(*Failure to Properly Manage Hazardous Waste Tank Secondary Containment System*)

42. The allegations of Paragraphs 1 through 41, above, are incorporated herein by reference as though fully set forth at length.

43. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.193, provides, in pertinent part and with exceptions not herein applicable, that: "(d) Secondary containment for tanks must include one or more of the following devices: . . . (1) A liner (external to the tank)."

44. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.193, further provides, in pertinent part and with exceptions not herein applicable, that:

> (e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements: (1) External liner systems must be: . . . (iii) Free of cracks or gaps; and (iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

45. At the time of the September 6, 2007 Facility Inspection and as alleged in Paragraph 31, above:

a. Respondent was storing D001 hazardous waste in Facility Tank 67;

b. Facility Tank 67 sat inside a concrete secondary containment basin (*i.e.*, a liner) with approximately two-foot-high concrete curbing;

c. cracks were present in, and extended completely through, the width of the North and South walls of the Tank 67 secondary containment concrete curbing; and

d. no impermeable coating, sealant or lining had been applied to the Facility Tank 67 secondary containment concrete curbing.

46. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.193(e)(1)(iii) and (iv), by storing hazardous waste in a tank whose secondary containment external liner curbing system was neither free of cracks or gaps nor capable of preventing lateral as well as vertical migration of the waste.

COUNT V
(*Failure to Minimize the Possibility of Hazardous Waste Releases*)

47. The allegations of Paragraphs 1 through 46, above, are incorporated herein by reference as though fully set forth at length.

48. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.31, provides that: "[f]acilities must be designed, constructed, maintained, and operated 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, or surface water

which could threaten human health or the environment."

49. At the time of the September 6, 2007 Facility Inspection and as alleged in Paragraph 31, above:

a. an oily spillage of D001/ D018 remediation well oil hazardous waste was present on the concrete pavement of the Facility's "Tote-Pumping Area", adjacent to totes used to collect such hazardous waste prior to transport into Facility Tank 1008; and

b. D008 paint and blast media hazardous waste from the recent stripping of a tank also was present on the ground surrounding twenty-two 55-gallon drums that were dated and marked as containing "Hazardous Waste" and located next to, and below, the "#15 Still" of the Facility.

50. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.31, by failing to maintain and operate its Facility so as to minimize the possibility of a fire, explosion, or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

COUNT VI
(*Failure to Contain Universal Waste Lamps Properly*)

51. The allegations of Paragraphs 1 through 50, above, are incorporated herein by reference as though fully set forth at length.

52. 25 PA Code Section 266b.1, which incorporates by reference the universal waste lamp management standards of 40 C.F.R. § 273.13(d), provides, in pertinent part that: "A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

53. At the time of the September 6, 2007 Facility Inspection, Respondent was a small quantity handler of universal waste and was storing, at Facility Building 22, the following universal waste:

a. a quantity of mercury-containing used waste lamps (of indeterminate size) in a half-filled, open and unlabeled cardboard box, approximately one cubic yard in volume; and

b. at least 20 additional mercury-containing used waste lamps, of eight-foot length, that were being stored without any containerization.

54. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d), by storing universal waste lamps at the Facility without containerization, in containers or packages that were not structurally sound and/or adequate to prevent breakage, and in containers or packages that were not closed.

COUNT VII
(*Failure to Label or Mark Universal Waste Batteries and Lamps*)

55. The allegations of Paragraphs 1 through 54, above, are incorporated herein by reference as though fully set forth at length.

56. 25 PA Code Section 266b.1, which incorporates by reference the 40 C.F.R. § 273.14 labeling/marking standards for universal waste, provides, in pertinent part, that: "A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below: (a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: ''Universal Waste—Battery(ies),'' or ''Waste Battery(ies),'' or ''Used Battery(ies);'' . . . [and] (e) Each lamp or 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)''.

57. At the time of the September 6, 2007 Facility Inspection, on a set of small shelves inside an exterior wall of Facility Building 63, Respondent was storing universal waste batteries that included one rechargeable tool cartridge and approximately eight other small battery packs. These universal waste batteries were not containerized and they were neither labeled nor marked with the phrase ''Universal Waste—Battery(ies)", ''Waste Battery(ies)", or ''Used Battery(ies)''.

58. At the time of the September 6, 2007 Facility Inspection, the mercury-containing used waste lamps that the Respondent was storing in Facility Building 22, as identified in Paragraph 53, above, were not labeled or marked with the phrase: ''Universal Waste—Lamp(s),'' ''Waste Lamp(s),'' or ''Used Lamp(s)''.

59. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.14(a) and (e), by failing to label properly universal waste batteries, a mercury-containing used waste lamp container and mercury-containing used waste lamps in storage at the Facility.

IV. CIVIL PENALTIES

60. Respondent agrees to pay a civil penalty in the amount of **Thirty Seven Thousand Four Hundred and Eleven Dollars (*$37,411.00*)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations 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 the 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 this CAFO is mailed or hand-delivered to Respondent.

61. The civil penalty settlement amount set forth in Paragraph 60, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* (" Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum and in the RCRA Penalty Policy, penalties for RCRA violations occurring after January 30, 1997 were increased by 10% to account for inflation, not to exceed a $27,500.00 per violation statutory maximum penalty. Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after March 15, 2004 have been increased by an additional 17.23% to account for subsequent inflation, not to exceed a current $32,500.00 per violation statutory maximum penalty.

62. Payment of the civil penalty as required by Paragraph 60, above, shall be made via one of the following methods:

a. All checks shall be made payable to "**United States Treasury**";

b. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

c. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency – Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

d. 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"

e. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

f. On-Line Payment Option: WWW.PAY.GOV

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

g. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

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

63. All payments by the Respondent shall include the Respondent's full name and address and the EPA Docket number of this Consent Agreement (RCRA-03-2008-0358).

64. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check or EFT authorization, as applicable, to:

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

and

A.J. D'Angelo
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

65. 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.

66. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order 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).

67. 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.

68. 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).

69. 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

70. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the authorized Pennsylvania Hazardous Waste Management Program and RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are

alleged in this Consent Agreement.

VI. OTHER APPLICABLE LAWS

71. 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

72. This CAFO resolves only EPA's claims for civil penalties for the specific violations 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

73. Payment of the civil penalty as specified in Section IV ("Civil Penalties"), above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Section 3008(a), 42 U.S.C. § 6928(a), for the violations alleged in this Consent Agreement.

IX. PARTIES BOUND

74. This Consent Agreement and the accompanying Final Order 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 Consent Agreement and the accompanying Final Order.

X. EFFECTIVE DATE

75. 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

76. 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 Neville Chemical Company:

Date: 3/12/08

By: _____

Jack Ferguson
Vice President & Plant Manager Neville Island
Neville Chemical Company

For the Complainant: U.S. Environmental Protection Agency, Region III

Date: 8/19/2008 By: _____
A.J. D'Angelo
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, 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: 8/22/08 By: _____
Abraham Ferdas, Director
Land and Chemicals Division