

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:
(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: JAMES HERNANDEZ 10/6/11
Name of Contact person Date

in the EPA-3 ORC at 215-814-2640
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
APPLIED CONTINUS SYSTEMS, INC. AND RONALD L. KAUFMAN

The Total Dollar Amount of Receivable \$50,000 (JOINT + SEVERAL) (If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2012-0003

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office LAND AND CHEMICALS DIVISION
OFFICE OF LAND ENFORCEMENT

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 3. Regional Counsel |

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EPA REGION III PHILADELPHIA

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

RECEIVED
 2011 OCT 25 PM 4: 39
 REGION III PHILA PA

In the Matter of:	:	
	:	
	:	
Applied Coating Systems, Inc.	:	
2915 Wilmarco Ave.	:	Docket No. RCRA-03-2012-000
Baltimore, Maryland 21223	:	
	:	
Ronald L. Kaufman	:	
	:	CONSENT AGREEMENT
Respondents	:	
	:	Proceeding under Section 3008(a) and
Applied Coating Systems, Inc.	:	(g) of the Resource Conservation and
2915 Wilmarco Ave.	:	Recovery Act, as amended, 42 U.S.C.
Baltimore, Maryland 21223	:	Section 6928(a) and (g)
	:	
Facility	:	

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Applied Coating Systems, Inc., and Ronald L. Kaufman (“Respondents”) pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act (“RCRA”) of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments (“HSWA”) of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. § 6928(a), 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).

This Consent Agreement (“CA”) and the accompanying Final Order (“FO”) address alleged violations by Respondents of Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939f, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the State of Maryland Hazardous Waste Management Regulations (“MdHWMR”), set forth at the Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 13 *et seq.*, in connection with Respondents’ former facility located at 2915 Wilmarco Ave., Baltimore, Maryland 21223 (the “Facility”). The MdHWMR were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

I. GENERAL PROVISIONS

1. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached FO (hereinafter jointly referred to as this “CAFO”) simultaneously commence and conclude an administrative proceeding against Respondents, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA at Respondents’ former Facility.
2. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.
3. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 2, above.
4. For the purposes of this proceeding only, Respondents agree not to contest EPA’s jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
5. For purposes of this proceeding only, Respondents hereby expressly waive their right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
6. Respondents consent to the issuance of this CAFO and agree to comply with its terms.
7. Each party shall bear its own costs and attorney’s fees in connection with this proceeding.

II. Notice of Action to the State of Maryland

8. On July 2, 2010, EPA sent a letter to the State of Maryland, through the Maryland Department of the Environment (“MDE”), providing prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. Findings of Facts and Conclusions of Law

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the findings of fact and conclusions of law as set forth below.
10. EPA’s Office of Administrative Law Judges has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), and 40 C.F.R. § 22.1(a)(4) and .4(c).
11. Respondent, Applied Coating Systems, Inc., is and was at the time of the violations alleged herein, a Maryland corporation, and is and was a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B.
12. Respondent Ronald L. Kaufman is and was at the time of the violations alleged herein, a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR

26.13.01.03B.

13. At all times relevant to the allegations set forth in this CAFO, Respondents were the “owner” and/or “operator” of a “facility” located at 2915 Wilmarco Ave., Baltimore, Maryland (the aforementioned “Facility”) as these terms are defined by COMAR 26.13.01.03B. Respondents’ status as owners and/or operators of the Facility ended after they sold the Facility to a third party in July 2011.
14. At all times relevant to the allegations set forth in this CAFO, Respondents were “generators” of, and engaged in the “storage” of, materials that are “solid wastes” and “hazardous wastes” at the Facility as those terms are defined by COMAR 26.13.01.03B, as described below.
15. On April 7, 2010, EPA representatives conducted a Compliance Evaluation Inspection (“CEI”) of Respondents’ former Facility to determine compliance with Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939f, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the MdHWMR, set forth at COMAR, Title 26, Subtitle 13 *et seq.*

COUNT I

(Operating a Hazardous Waste Storage Facility without a Permit or Interim Status)

16. The allegations of Paragraphs 1 through 15 of the CAFO are incorporated herein by reference as though fully set forth at length.
17. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste treatment, storage or disposal facility (“TSD”) unless such person has first obtained a permit for the facility.
18. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, “interim status”) until such time as final administrative disposition of such application is made.
19. Respondents’ former Facility has never had “interim status” pursuant to RCRA Section 3005(e) or COMAR 26.13.06 or a permit issued pursuant to RCRA Section 3005(a) or COMAR 26.13.07 for the treatment, storage, or disposal of hazardous waste.
20. Pursuant to COMAR 26.13.03.05E(1), generators of hazardous waste who accumulate hazardous waste 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. Pursuant to COMAR 26.13.03.05E(1)(b), the generator must accumulate the waste in containers, tanks, or certain drip pads;
 - b. Pursuant to COMAR 26.13.03.05E(1)(d), the generator must accumulate the hazardous waste in containers in accordance with COMAR 26.13.05.09, which requires, *inter alia*, the containers must be closed during storage of hazardous waste except when it is necessary to add or remove waste (26.13.05.09D), and performing inspections of areas where containers of hazardous waste are stored at least weekly (26.13.05.09E);
 - c. Pursuant to COMAR 26.13.03.05E(1)(e), the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container of hazardous waste; and
 - d. Pursuant to COMAR 26.13.03.05E(1)(f), each container must be, *inter alia*, labeled or marked clearly with the words "Hazardous Waste", while being accumulated on site.
21. COMAR 26.13.03.05E(3) of the MdHWMR contains an additional exemption from the permitting requirements for the satellite accumulation of as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous waste in containers at or near the point of generation where wastes initially accumulated and which is under the control of the generator provided that the generator complies with COMAR 26.13.05.09B – D and marks the container with the words "Hazardous Waste" or with other words that identify the contents of the container.
22. COMAR 26.13.05.09D, referenced in COMAR 26.13.03.05E(1)(d) and 26.13.05.09E and Paragraphs 20 and 21, above, pertains to the "Management of Containers" and provides that "[a] container holding hazardous waste shall always be kept closed during storage, except when it is necessary to add or remove waste, and the container may not be opened, handled, or stored in a manner which may rupture the container or cause it to leak."
23. At the time of the violations alleged in this CA, Respondents were not eligible for an exemption under COMAR 26.13.03.05E(1) or .05E(3) with respect to the on-site storage of the hazardous waste described below at its former Facility because they did not meet the following conditions of these exemptions:
- a. From September 2, 2009 until March 23, 2010, a period of more than 90-days, Respondents generated and stored at the Facility's Hazardous Waste Storage Area seven 55-gallon containers of waste paint related materials which are hazardous waste exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11;

- b. At the time of EPA's April 7, 2010 CEI, Respondents stored five 5-gallon containers as satellite accumulation containers of spent solvent/waste paint which is a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11, without such containers being labeled or marked with the words "Hazardous Waste" or with any other words identifying its contents, as follows:
- i. one container in the Facility's Paint Booth D
 - ii. one container in the Facility's Paint Booth N;
 - iii. two containers in the Facility's Paint Booth J; and
 - iv. one container in the Facility's Paint Booth K.
- c. At the time of EPA's April 7, 2010 CEI, Respondents stored at the Facility's Hazardous Waste Room three 55-gallon containers of hazardous waste in the Hazardous Waste Room without such containers being marked or labeled with the words "Hazardous Waste" and without being properly dated with a hazardous waste accumulation start dates as follows:
- i. two 55-gallon containers of used paint solvents which are a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11, which were not marked or labeled with the words "Hazardous Waste" and failed to have a hazardous waste accumulation start date; and
 - ii. one 55-gallon container of used paint solvents, which is a hazardous waste exhibiting the characteristics of ignitability (D001) pursuant to COMAR 26.13.02.11 pursuant to COMAR 26.13.02.16, which failed to have a correct hazardous waste accumulation start date.
- d. At the time of EPA's April 7, 2010 CEI, Respondents stored at the Facility's Maintenance Area, an open container holding two spent aerosol cans which are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11 which was not marked or labeled with the words "Hazardous Waste" and failed to have a hazardous waste accumulation start date;
- e. At the time of EPA's April 7, 2010 CEI, Respondents stored next to Oven 16 at the Facility, three 5-gallon containers of waste paint and twenty 1-gallon "paint kits" with quart containers of catalyst, all of which are hazardous waste exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11, which were not marked or labeled with the words "Hazardous Waste" and failed to have a hazardous waste accumulation start date;
- f. At the time of EPA's April 7, 2010 CEI, Respondents stored at the Facility's Paint Room, a one-gallon container of the waste solvent toluene and another one-gallon container of the waste solvent methyl-ethyl-ketone ("MEK") as satellite accumulation containers which are hazardous waste exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11. In addition, the waste

solvent toluene is also a hazardous waste due to being a listed waste (U220) pursuant to COMAR 26.13.02.19, while the MEK is also a hazardous waste due to exhibiting the characteristic of toxicity due to the presence of MEK (D035) pursuant to COMAR 26.13.02.14 and being a listed waste (U159) pursuant to COMAR 26.13.02.19. None of these containers were labeled or marked with the words "Hazardous Waste" or with any other words identifying its contents;

- g. At the time of EPA's April 7, 2010 CEI, Respondents stored at the Facility's Outside Drum Storage Area the following containers of hazardous waste which were not marked or labeled with the words "Hazardous Waste" and failed to have a hazardous waste accumulation start date:
- i. eighteen 55-gallon containers of spent chromate waste which is a hazardous waste exhibiting the characteristics of corrosivity (D002) and toxicity due to the presence of chromium (D007) pursuant to COMAR 26.13.02.12 and 26.13.02.14;
 - ii. three 55-gallon containers of spray process waste which is a hazardous waste exhibiting the characteristic of toxicity due to the presence of chromium (D007) pursuant to COMAR 26.13.02.14; and
 - iii. one 55-gallon container of contaminated rainwater which is a hazardous waste exhibiting the characteristic of corrosivity (D002) pursuant to COMAR 26.13.02.12.
- h. At the time of the April 7, 2010 CEI, Respondents stored five containers as satellite accumulation containers of hazardous waste at the Facility, that were open at a time when it was not necessary to add hazardous waste or to remove hazardous waste from such containers as set forth below:
- i. one 5-gallon container of spent solvent/waste paint which is a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11 in the Facility's Paint Booth N;
 - ii. two 5-gallon containers of spent solvent/waste paint which is a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11 in the Facility's Paint Booth J;
 - iii. a one-gallon container of waste solvent toluene which is a hazardous waste exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11, and is also a hazardous waste due to being a listed waste (U220) pursuant to COMAR 26.13.02.19, at the Facility's Paint Room; and
 - iv. a one-gallon container of waste solvent MEK which is a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11, and is also a hazardous waste exhibiting the characteristic of toxicity due to the presence of MEK (D035) pursuant to COMAR 26.13.02.14 and being a listed waste (U159) pursuant to COMAR 26.13.02.19, at the Facility's Paint

Room.

- i. At the time of the April 7, 2010 CEI, Respondents stored four containers of hazardous waste at the Facility that were open at a time when it was not necessary to add hazardous waste or to remove hazardous waste from such container as set forth below:
 - i. in the Facility's Hazardous Waste Room two 55-gallon containers of spent solvent/waste paint which is a hazardous waste paint exhibiting the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11;
 - ii. in the Facility's Maintenance Area, a small open bin containing two spent aerosol spray which are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11; and
 - iii. in the Facility's Outside Drum Storage Area, one 55-gallon container of contaminated rainwater which is a hazardous waste exhibiting the characteristic of corrosivity (D002) pursuant to COMAR 26.13.02.12.
24. As set forth above in Paragraph 23, from September 2, 2009 until April 7, 2010, Respondents were storing hazardous waste at the Facility without a permit, interim status or valid exemption and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

COUNT II

(Failure to Keep Containers Closed During Storage)

25. The allegations of Paragraphs 1 through 24 of the CAFO are incorporated herein by reference as though fully set forth at length.
26. COMAR 26.13.05.09D provides that owners and operators of TSDFs must ensure that any container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.
27. At the time of the April 7, 2010 CEI, Respondents were storing three open 5-gallon containers, two open one-gallon containers, three open 55-gallon containers and a small open bin of hazardous waste at the Facility as described in Paragraph 23, subparagraphs h and i, above.
28. Respondents' acts and/or omissions as alleged in Paragraph 27, above, are a violation of COMAR 26.13.05.09D.

COUNT III

(Failure to Make Hazardous Waste Determinations)

29. The allegations of Paragraphs 1 through 28 of the CAFO are incorporated herein by reference as though fully set forth at length.
30. COMAR 26.13.03.02A requires that generators of “solid waste” as defined in COMAR 26.13.02.02 shall determine if that waste is a “hazardous waste” using the method set forth in COMAR 26.13.03.02A. This method requires the generator to:
- a. First determine if the waste is excluded from regulation under COMAR 26.13.02.04-.4.5;
 - b. Then determine if the waste is listed as a hazardous waste in COMAR 26.13.02.15-.19; and
 - c. If the waste is not listed as a hazardous waste in COMAR 26.13.02.15-.19, the generator shall determine whether the waste is identified by either testing the waste according to the methods set forth in COMAR 26.13.02.10-.14, or, according to an equivalent method approved by the MDE under COMAR 26.13.01.04B, or apply knowledge of the hazardous characteristic of the waste in light of the materials or processed used.
31. As the persons who generated the solid wastes described in this Count, Respondents were required by COMAR 26.13.03.02A to determine if the solid wastes they generated were hazardous wastes using the method described in Paragraph 30, above.
32. At the time of the April 7, 2010 CEI, Respondents had generated the following solid wastes at their former Facility without making a hazardous waste determination for such wastes:
- a. Used fabric filters from the architectural coating operation;
 - b. Used aerosol containers;
 - c. Various “purge” chemicals (outdated paint); and
 - d. One 55-gallon container of nitric acid and rainwater.
33. The used fabric filers at Respondents’ former Facility are hazardous wastes because they exhibit the characteristic of toxicity for chromium (D007) pursuant to COMAR 26.13.02.14.
34. The used aerosol cans at Respondents’ former Facility are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11.

35. The purge chemicals cited in the April 7, 2010 CEI are old, unusable paints and are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11.
36. The 55-gallon container of nitric acid and rainwater is a hazardous waste exhibiting the characteristic of corrosivity (D002) pursuant to COMAR 26.13.02.12.
37. Respondents' acts and/or omissions as alleged in Paragraphs 32-36, above, are a violation of COMAR 26.13.03.02A.

COUNT IV

(Failure to Minimize the Possibility of Releases of Hazardous Wastes)

38. The allegations of Paragraphs 1 through 37 of the CAFO are incorporated herein by reference as though fully set forth at length.
39. COMAR 26.13.05.03B requires the owners or operators of a TSDF must ensure that, *inter alia*, the facility is 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 that could threaten human health or the environment.
40. On or around the time of the April 7, 2010 CEI, Facility employees punctured aerosol cans by hand in the open air in the Maintenance Area. Aerosol can are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11.
41. On or around the time of the April 7, 2010 CEI, Respondents stored "purged" outdated paints in leaking containers near Oven 16 at their former Facility. The purge chemicals are old, unusable paints and are hazardous wastes because they exhibit the characteristic of ignitability (D001) pursuant to COMAR 26.13.02.11.
42. Respondents acts and/or omissions as alleged in Paragraphs 40 – 41 of failing to maintain and operate their former 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 or surface water that could threaten human health or the environment are a violation of COMAR 26.13.05.03B.

COUNT V

(Failure to Prepare and/or Maintain LDR Notification Forms)

43. The allegations of Paragraphs 1 through 42 of the CAFO are incorporated herein by reference as though fully set forth at length.
44. 40 C.F.R. § 268.7(a)(1) requires generators of hazardous waste to determine if the waste

must be treated before it can be land disposed.

45. 40 C.F.R. § 268.7(a)(2) requires generators of hazardous waste who determine that the waste does not meet applicable treatment standards or who choose not to make the determination of whether such waste must be treated, with the initial shipment of waste to each treatment or storage facility, to send a one-time written notice setting forth the information in the column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 40 C.F.R. § 268.7(a)(4) to each treatment or storage facility receiving the waste and maintain a copy of each such Land Disposal Restriction ("LDR") form. Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make that determination."
46. 40 C.F.R. § 268.7(a)(8) requires generators of hazardous waste to retain on-site a copy of all notices, certifications, waste analysis data and other documentation produced pursuant to 40 C.F.R. Part 268 for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage or disposal.
47. At the time of the April 7, 2010 CEI, Respondents failed to maintain a copy of the LDR form for the D002/D007 hazardous waste identified on Manifest 20003385 which was shipped off-site on September 1, 2009.
48. Respondents' acts and/or omissions as alleged in Paragraph 47, above, are a violation of 40 C.F.R. § 268.7(a)(8).

IV. CIVIL PENALTY

49. Respondents consent to the assessment of a civil penalty in the amount of **Fifty Thousand Dollars (\$50,000.00)** in full satisfaction of all claims for civil penalties for the violations alleged in this CAFO. Payment of the aforesaid civil penalty shall be made by Respondents either in one (1) payment of \$50,000 on behalf of both Respondents; or two (2) separate payments by Respondents on behalf of both Respondents, the combined amount of which is \$50,000. Regardless of how the Respondents agree to apportion the payment of \$50,000, both Respondents are jointly and severally liable for payment of the full \$50,000 and any interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO. Such civil penalty amount is due and payable immediately upon Respondents' receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, each Respondent must ensure that the civil penalty required by this CAFO is paid no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to that Respondent.

50. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), which include the seriousness of the violation and any good faith efforts to comply with applicable requirements, and EPA's RCRA Civil Penalty Policy (June 2003) ("Penalty Policy"). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"), in determining the penalty amount set forth in Paragraph 49, above.

51. Payment of the civil penalty set forth in Paragraph 49, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 52, 53, 54 and 55, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondents shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2012-0003;

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

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

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

Customer service contact: 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

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

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

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

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

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

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

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

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

Contact: 866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

- i. Additional payment guidance is available at:

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

- j. Payments by Respondents shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondents' check(s) or a copy(ies) of Respondents' electronic fund transfer shall be sent simultaneously to:

James Heenehan
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
53. Interest on the civil penalty assessed in this CAFO will begin to accrue for each Respondent on the date that a true and correct copy of this CAFO is mailed or hand-delivered to that specific Respondent. However, EPA will not seek to recover interest on any amount of the 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).
54. 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.
55. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

V. FULL AND FINAL SATISFACTION

57. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. §6928(a) and (g), for the violations alleged in this CAFO for the specific violations alleged against Respondents in this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VI. CERTIFICATION OF COMPLIANCE

58. The person signing this CA on behalf of each Respondent certifies to EPA by his or her signature herein that this Respondent, as of the date of Respondents' sale of the Facility to a third party in July 2011, was in compliance with the provisions of RCRA, Subtitle C, Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939e, federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the MdHWMR, COMAR Title 26, Subtitle 13 *et seq.*, at the Facility. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle C of RCRA.

VII. RESERVATION OF RIGHTS

59. EPA reserves the right to commence action against any person, including either 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. OTHER APPLICABLE LAWS

60. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

IX. AUTHORITY TO BIND THE PARTIES

61. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement on behalf of

that Respondent and bind that Respondent hereto.

X. ENTIRE AGREEMENT

62. This CAFO constitute 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 CA and the attached FO.

XI. EFFECTIVE DATE

63. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

9/29/2011
Date

Applied Coating Systems, Inc.

Ronald L. Kaufman
by: Ronald L. Kaufman

For Respondent:

9/29/2011
Date

Ronald L. Kaufman

Ronald L. Kaufman
by: Ronald L. Kaufman

For Complainant:

10/6/11
Date

**U.S. Environmental Protection Agency,
Region III**

James Heenehan
James Heenehan
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

10/12/11
Date

Abraham Ferdas
Abraham Ferdas, Director,
Land and Chemicals Division
EPA Region III

