

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

**In the matter of:** )  
) )  
**Ellwood Quality Steels Company** )  
**700 Moravia St., Suite 7** )  
**New Castle, PA 16101** )  
) )  
**RESPONDENT.** )  
) )  
**Ellwood Quality Steels Company** )  
**700 Moravia St.** )  
**New Castle, PA 16101** )  
) )  
**FACILITY.** )

**Docket No. RCRA-03-2012-0014**

**Proceeding Under Section**  
**3008(a) and (g) of the**  
**Resource Conservation and**  
**Recovery Act, as amended,**  
**42 U.S.C. § 6928(a) and (g)**

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**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Ellwood Quality Steels Company ("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 Respondent.

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 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 September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009 respectively. The PaHWR incorporate, with certain exceptions, federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization, and October 12, 2005 for the April 29, 2009 PaHWR authorization. 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. 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 700 Moravia Street, New Castle, Pennsylvania 16101.
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated February 3, 2011, 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**

6. Respondent admits the jurisdictional allegations set forth in this CAFO.
7. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 6, immediately above.
8. 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.

9. 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.
10. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
11. Respondent shall bear its own costs and attorney's fees.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. 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:
13. Respondent is a Pennsylvania corporation.
14. Respondent 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 § 260a.10.
15. Respondent is and has at all times relevant to the allegations set forth in this CAFO, has been the "owner" and "operator" of a "facility" located at 700 Moravia Street, New Castle, Pennsylvania 16101 (hereinafter, the "Facility"), as these terms are defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 PA Code § 260a.10.
16. 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.
17. 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]" at the Facility, as the term "storage" is defined in 25 PA Code Section 260a.10, and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
18. At all times relevant to this CAFO, and as described below, Respondent has engaged in the "disposal" of "solid waste" and "hazardous waste" as the term "disposal" is defined in 25 PA Code Section 260a.10 and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
19. Respondent's Facility is and has at all times relevant to the allegations set forth in this CAFO, has been a hazardous waste storage and disposal "facility" as that term is defined in 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.

20. Respondent has submitted to EPA a Notification of Hazardous Waste Activity (“Notification”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which include operation as a large quantity generator of hazardous waste.
21. On September 28, 2010, duly authorized representatives of EPA and PaDEP conducted a compliance evaluation inspection (the “Inspection”) of the Facility to assess compliance with federally authorized PaHWR requirements.
22. On December 17, 2010, EPA sent Respondent a letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), requesting additional information concerning the operations at the Facility relevant to the alleged violations set forth in this CAFO.
23. On June 21, 2011 EPA sent a Request for Further Information and Opportunity to Show Cause letter (“Show Cause letter”) to Respondent advising it 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 EPA’s December 17, 2010 RCRA Section 3007(a) information request letter and June 21, 2011 Show Cause letter, Respondent submitted information to EPA in letters dated January 20, 2011 and July 20, 2011. Respondent also sent EPA a September 1, 2011 email providing additional information about the alleged violations set forth in this CAFO as part of the parties’ ongoing settlement negotiations.
25. On the basis of the Facility Inspection and a review of the supplemental information provided to EPA by Respondent in response to EPA’s December 17, 2010 RCRA 3007(a) information request letter, Show Cause letter, and other correspondence, 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.

#### **Permit Requirements**

26. 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.
27. At all times relevant hereto, Respondent did not have 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 or disposal of hazardous waste at the Facility, and did not 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.

**Permit Exemption Conditions - Accumulation Time/Requirements**

28. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste in containers on-site for 90 days or less 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)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subparts I, AA, BB and CC;
  - b. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container; and
  - c. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste".

**Regulatory Permit Exemption Conditions - Management of Containers**

29. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I, including the provisions of 40 C.F.R. § 265.173(a), which require that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."
30. 25 Pa. Code § 265a.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 265, Subpart I, including the provisions of 40 C.F.R. § 265.174, which requires, with exceptions not relevant here, that "[a]t least weekly, the owner or operator must inspect areas where containers are stored....The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors."

**Regulatory Permit Exemption Conditions - Management of Universal Waste**

31. Except with exceptions not relevant here, 25 Pa. Code § 266b.1 incorporates by reference requirements and provisions of 40 C.F.R. Part 273, pertaining to the management of "universal waste" set forth in the Universal Waste Management requirements of Chapter 266b of the PaHWR.

32. 40 C.F.R. § 273.1(b), as incorporated by reference in 25 Pa. Code § 266b.1, specifies that Part 273 provides an alternative set of management standards in lieu of regulation under 40 C.F.R. Parts 260 through 272 for universal waste.
33. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “Universal Waste” as including, *inter alia*, “batteries” as described in 40 C.F.R. § 273.2 and “lamps” as described in 40 C.F.R. § 273.5.
34. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “battery” as “a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store and deliver electric energy.”
35. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines “lamp” as “the bulb or bulb portion of an electric lighting device. A lamp is specifically designed to produce radiant energy....Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.”
36. 40 C.F.R. § 273.2, as incorporated by reference in 25 Pa. Code § 266b.1, specifies that batteries are covered under 40 C.F.R. Part 273 except for spent acid batteries, batteries that are not yet wastes under 40 C.F.R. Part 261, and batteries that are not hazardous waste.
37. 40 C.F.R. § 273.5, as incorporated by reference in 25 Pa. Code § 266b.1, specifies that lamps are covered under 40 C.F.R. Part 273 except for lamps that are not yet wastes under 40 C.F.R. Part 261, and lamps that are not hazardous waste.
38. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines a “Small Quantity Handler of Universal Waste” as one who does not accumulate 5,000 kilograms or more of universal wastes at any time.
39. 40 C.F.R. § 273.11, as incorporated by reference in 25 Pa. Code § 266b.1, with exceptions not relevant here, prohibits a small quantity handler of universal waste from disposing, diluting or treating universal waste.
40. 40 C.F.R. § 273.9, as incorporated by reference in 25 Pa. Code § 266b.1, defines a “Destination facility” as, a facility that treats, disposes of, or recycles a particular category of universal waste, with certain exceptions not relevant here.
41. 40 C.F.R. § 273.60(a), as incorporated by reference in 25 Pa. Code § 266b.1, specifies that the owner or operator of a destination facility is subject to all applicable requirements of 40 C.F.R. Parts 264, 265, 266, 268, 270 and 124.

**COUNT I**  
***(Operating Without a Permit)***

42. The allegations of Paragraphs 1 through 41, above, of this Consent Agreement are incorporated herein by reference.
43. At all times relevant to this CA, Respondent has been the owner and operator of a facility (i.e., the Facility), where the Respondent engaged in hazardous waste management activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
44. At all times relevant to this CA, Respondent was the generator of hazardous waste, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, having EPA Hazardous Waste Numbers that include, but which are not necessarily limited to, D008, D009, and K061, as specified in 40 C.F.R. §§ 261.24 and 261.32 and incorporated by reference in 25 Pa. Code § 261a.1.
45. At all times relevant to this CA, Respondent engaged in the *storage*, as that term is defined in 25 Pa. Code § 260a.10, of hazardous waste in container[s] as those terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, at the Facility including, but not limited to:
- a. lead contaminated dust, a D008 hazardous waste exhibiting the characteristic of toxicity; and
  - b. electric arc furnace dust, a K061 listed hazardous waste;
  - c. and ladle furnace dust, a K061 listed hazardous waste.
46. On September 28, 2010, Respondent was storing hazardous waste in the containers identified below at the Facility. These containers did not have a clearly marked accumulation of hazardous waste date visible as required pursuant to 25 PA Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(2), for meeting the less than 90-day storage permit exemption requirement set forth above in Paragraph 28.b:
- a. one tractor trailer container of electric arc furnace dust, a K061 listed hazardous waste;
  - b. one tractor trailer container of ladle furnace dust, a K061 listed hazardous waste; and

- c. one twenty cubic yard roll-off box container of lead-contaminated dust, a D008 hazardous waste exhibiting the characteristic of toxicity, from the Facility's vacuum degasser unit.
47. On September 28, 2010, Respondent was storing hazardous waste in the containers identified below at the Facility. These containers were not labeled or otherwise marked with the words "Hazardous Waste", as required pursuant to 25 PA Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(3), which is required to comply with the less than 90-day storage permit exemption requirement set forth above in Paragraph 28.c:
  - a. one tractor trailer container of electric arc furnace dust, a K061 listed hazardous waste;
  - b. one tractor trailer container of ladle furnace dust, a K061 listed hazardous waste; and
  - c. one twenty cubic yard roll-off box container of lead contaminated dust, a D008 hazardous waste exhibiting the characteristic of toxicity, from the Facility's vacuum degasser unit.
48. On September 28, 2010, Respondent was storing lead contaminated dust, a D008 hazardous waste exhibiting the characteristic of toxicity, from the Facility's vacuum degasser unit, in a twenty cubic yard roll-off box that was not closed (at a time when it was not necessary to add or remove hazardous waste from the container), as required pursuant to the requirements of 25 PA Code Section 262a.10, which incorporate by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i), which in turn incorporates 40 C.F.R. § 265.173(a) which is required to comply with the less than 90-day storage permit exemption requirements set forth above in Paragraphs 28.a and 29.
49. From approximately January 1, 2007 through September 28, 2010, Respondent was storing hazardous wastes in containers at the Facility as set forth above without conducting weekly inspections of such containers as required by 25 PA Code Section 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i) and of 40 C.F.R. Part 265, Subpart I, for meeting the less than 90-day storage permit exemption requirement set forth above in Paragraphs 28.a and 29.
50. For each of the reasons and during each of the times set forth in Paragraphs 43 through 49, above, Respondent failed to comply with the conditions for the temporary storage (*i.e.*, 90 days or less) of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 PA Code Section 262a.10, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.



51. On approximately thirty separate occasions from November 1, 2006 through September 28, 2010, Respondent disposed of universal waste lamps, a D009 hazardous waste exhibiting the characteristic of toxicity due to their mercury content, at its Facility.
52. As stated in Paragraph 39, above, a small quantity handler of universal waste is prohibited from disposing of universal waste.
53. As stated in Paragraph 40, above, a destination facility is a facility that disposes of universal waste.
54. Because Respondent disposed of universal waste lamps at its Facility, Respondent is not a small quantity handler of universal waste lamps and Respondent's Facility is a destination facility with respect to disposal of universal waste lamps subject to the permitting requirements of 40 C.F.R. Parts 264, 265, 266, 268, 270 and 124 as per 40 C.F.R. § 273.60, as incorporated by 25 Pa. Code § 266b.1.
55. From at least November 1, 2006 through September 28, 2010, 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 storing hazardous waste and disposing of universal waste lamps at the Facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

## **COUNT II**

### ***(Failure to Keep Containers of Hazardous Waste Closed During Storage)***

56. The allegations of Paragraphs 1 through 55, above, are incorporated herein by reference as though fully set forth at length.
57. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."
58. On September 28, 2010, the twenty cubic yard roll-off box container of hazardous waste (D008 lead-contaminated dust) previously identified in Paragraphs 46-48, above, was stored at the Facility and was not kept closed at times when it was not necessary to add or remove waste.
59. On September 28, 2010, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding hazardous waste in a container that was not kept closed during storage, when it was not necessary to add or remove waste.

### **COUNT III**

#### ***(Failure to Maintain the Facility in a Manner to Prevent a Release)***

60. The allegations of Paragraphs 1 through 59, above, are incorporated herein by reference as though fully set forth at length.
61. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.31, provides that facilities be designed, constructed, maintained and operated to minimize the possibility of, *inter alia*, 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.
62. On September 28, 2010, the twenty cubic yard roll-off box *container of hazardous waste* (D008 lead-contaminated dust) previously identified in Paragraphs 46-48, above, at the Facility had D008 lead contaminated dust on the floor around the container resulting from Respondent's use of a crane to transfer such contaminated dust to the roll-off box container in a manner that resulted in spillage of such contaminated dust onto the floor near the container.
63. As set forth above in Paragraph 62, above, on September 28, 2010, Respondent's actions in the transfer of lead contaminated D008 hazardous waste failed to minimize the possibility of 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, and therefore, were a violation of 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.31.

### **COUNT IV**

#### ***(Failure to Conduct Weekly Inspections of Hazardous Waste Storage Container Areas)***

64. The allegations of Paragraphs 1 through 63, above, are incorporated herein by reference as though fully set forth at length.
65. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.174, provides that at least weekly, the owner or operator of a hazardous waste treatment, storage or disposal facility shall inspect areas where hazardous waste containers are stored looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.
66. From approximately January 1, 2007 through September 28, 2010, Respondent failed to inspect, at least weekly, areas at the Facility where hazardous waste containers were being stored looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.
67. As set forth above in Paragraph 66, from approximately January 1, 2007 through

September 28, 2010, Respondent's failure to inspect, at least weekly, areas at the Facility where hazardous waste containers were being stored looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors were a violation of 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.174.

#### **COUNT V**

##### ***(Failure to Provide Hazardous Waste Training)***

68. The allegations of Paragraphs 1 through 67, above, are incorporated herein by reference as though fully set forth at length.
69. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16, provides that, *inter alia*, the owner or operator of a hazardous waste treatment, storage or disposal facility shall provide initial and annual training to each person employed in a position related to hazardous waste management at the facility as required by 40 C.F.R. § 264.16(b) and (c).
70. For the years 2006, 2007, 2008 and 2009, Respondent failed to provide facility employees in positions related to hazardous waste management the initial classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the hazardous waste requirements of 40 C.F.R. § 264.16(b). Respondent also failed to provide annual refresher training for such employee in 2006, 2007, 2008 and 2009 as required by 40 C.F.R. § 264.16(c). As a result of these failures, for calendar years 2006, 2007, 2008 and 2009, Respondent violated 25 PA Code Section 264a.1 which incorporates by reference 40 C.F.R. § 264.16(b) and (c).

#### **COUNT VI**

##### ***(Failure to Maintain Hazardous Waste Training Records)***

71. The allegations of Paragraphs 1 through 70, above, are incorporated herein by reference as though fully set forth at length.
72. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16, provides that, *inter alia*, the owner or operator of a hazardous waste treatment, storage or disposal facility to maintain the following documents and records at the facility as required by 40 C.F.R. § 264.16(d):
  - a. the job title for each position related to hazardous waste management;
  - b. the name of each employee filling each job;
  - c. a written job description for each position listed in 40 C.F.R. § 264.16(d)(1) including the requisite skill, education, or other qualification and duties of employees assigned to each position;
  - d. a written description of the type and amount of both introductory and continuing

- e. training that will be given to each position listed under 40 C.F.R. § 264.16(d)(1); records that document the training or job experience required under 40 C.F.R. § 264.16(d)(1), (2) and (3) and completed by facility personnel.

73. For the years 2006, 2007, 2008 and 2009, Respondent failed to prepare and maintain the above-referenced documents and records for Facility personnel and, therefore, violated 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d).

#### **COUNT VII**

##### ***(Failure to Include a Hazardous Waste Code on 28 Hazardous Waste Manifests)***

74. The allegations of Paragraphs 1 through 73, above, are incorporated herein by reference as though fully set forth at length.
75. 25 PA Code Section 262a.10, which incorporates by reference 40 C.F.R. Part 262 (but not 40 C.F.R. § 262.20(b) and (c)) and the Appendices thereto and 25 PA Code Section 262a.20, require a generator of hazardous waste to complete a hazardous waste manifest for off-site shipments of hazardous waste.
76. 25 PA Code Section 262a.20(1) requires the generator to “complete the manifest form in its entirety.”
77. The hazardous waste manifest form (EPA Form 8700-22) set forth in the Appendix to 40 C.F.R. Part 262 requires that for each waste listed in Item 9 of the form, up to six hazardous waste codes which are most representative of the properties of such waste to be entered onto the manifest in Item 13 of the manifest form.
78. The hazardous waste codes to be included on a hazardous waste manifest are set forth in 40 C.F.R. Part 261, Subparts C and D.
79. On 28 separate occasions in 2010, Respondent shipped hazardous waste generated at the Facility offsite to off-site facilities without including the hazardous waste codes for such wastes in Item 13 of the hazardous waste manifest accompanying such shipments and, therefore violated 25 PA Code Section 262a.10, which incorporates by reference 40 C.F.R. Part 262 (but not 40 C.F.R. § 262.20(b) and (c)) and the Appendices thereto, as well as 25 PA Code Section 262a.20.

#### **COUNT VIII**

##### ***(Failure to Comply with Universal Waste Labeling/Marking Requirements)***

80. The allegations of Paragraphs 1 through 79, above, are incorporated herein by reference as though fully set forth at length.
81. 25 PA Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part

273, including the “Standards for Small Quantity Handlers of Universal Waste” which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the 40 C.F.R. § 273.14(a) requirements governing universal waste battery labeling/marketing requirements.

82. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste batteries.
83. 40 C.F.R. § 273.14(a) requires that “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).”
84. On September 28, 2010, Respondent was accumulating one container of universal waste batteries that was not labeled or marked with any one of the applicable and required phrases (i.e., “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies)”).
85. On September 28, 2010, Respondent violated 25 Pa. Code § 266b.1., which incorporates by reference the requirements of 40 C.F.R. § 273.14(a) by failing to properly label or mark universal waste batteries that it was accumulating, or the container of batteries, at the Facility.

#### IV. CIVIL PENALTIES

86. Respondent agrees to pay a civil penalty in the amount of **ONE HUNDRED AND FIFTY Thousand Dollars (\$150,000.00)**, 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 a copy of this CAFO is mailed or hand-delivered to Respondent.
87. The civil penalty settlement amount set forth in Paragraph 86, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has

also considered the Adjustment of Civil 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").

88. Payment of the civil penalty set forth in Paragraph 86, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 90, 91, 92 and 93, 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 EPA Docket Number of this Consent Agreement, *i.e.*, RCRA-03-2012-0014;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
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 and mailed to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
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 = 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

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

- g. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

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

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

and

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

90. 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:
91. 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).
92. 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.
93. 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).
94. 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**

95. 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 current, authorized revised PaHWR and of RCRA Subtitle



C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this Consent Agreement.

**VI. OTHER APPLICABLE LAWS**

96. 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**

97. 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**

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

**IX. PARTIES BOUND**

99. 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**

100. 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.

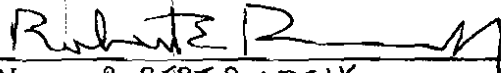
**XI. ENTIRE AGREEMENT**

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

For Respondent:

Ellwood Quality Steels Company:


Date: 11-22-11

By:   
Name: ROBERT QUIMCIK  
Title: PRESIDENT

For the Complainant:


U.S. Environmental Protection Agency, Region III

Date: 12/6/11

By:   
James Heenchan  
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: 12/8/11

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

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

In the matter of:

Ellwood Quality Steels Company  
700 Moravia St., Suite 7  
New Castle, PA 16101

RESPONDENT.

Ellwood Quality Steels Company  
700 Moravia St  
New Castle, PA 16101

FACILITY.

)  
)  
) Docket No. RCRA-03-2012-0014  
)  
)  
)

) Proceeding Under Section  
) 3008(a) and (g) of the  
) Resource Conservation and  
) Recovery Act, as amended,  
) 42 U.S.C. § 6928(a) and (g)  
)  
)  
)

FINAL ORDER

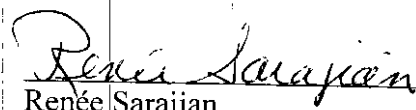
Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Ellwood Quality Steels Company, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty pay a civil penalty of **One Hundred and Fifty Thousand Dollars (\$150,000.00)**, as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the

date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

12/13/11  
Date:

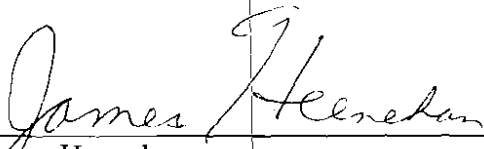
  
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I hand-delivered the original and one true and correct copy of the Consent Agreement and Final Order for *In the Matter of: Ellwood Quality Steels Company* (Docket No. RCRA-03-2012-0014), to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch St., Philadelphia, PA, 19103, and that I sent a true and correct copy of same to Respondent, Ellwood Quality Steels Company, in care of its below-listed attorney via UPS:

For Respondent:      John Englert  
                                 K & L Gates, LLP  
                                 210 Sixth Ave.  
                                 Pittsburgh, PA 15222-2613

12/13/11  
Date

  
\_\_\_\_\_  
James Heenehan  
Sr. Assistant Regional Counsel (3RC30)  
U.S. EPA Region III

REGIONAL HEARING CLERK  
EPA REGION III, PHILA, PA

2011 DEC 13 PM 5:03

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