

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

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In the Matter of:

Docket No. RCRA-03-2012-0229

**Maryland Air National Guard,
175th Wing, U.S. Air Force**

Respondent

**175th Wing
2701 Eastern Boulevard
Baltimore, Maryland 21220**

Facility

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

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 the Maryland Air National Guard, 175th Wing (“Respondent”) 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 Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939e, 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 Respondent’s facility located at 2701 Eastern Boulevard, Baltimore, Maryland 21220 (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 Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA at Respondent’s Facility.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Respondent neither admits nor denies 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, Respondent agrees 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, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO, or any right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
6. Respondent consent to the issuance of this CAFO and agrees to comply with its terms.
7. Respondent 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 October 19, 2011, 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. The 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 is the Maryland Air National Guard, 175th Wing, acting in its capacity under U.S.C. Title 10, as a reserve component of the U.S. Air Force.
12. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
13. Respondent is a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).
14. Respondent is and has been, at all times relevant to the allegations set forth in this CAFO, the “owner” and/or “operator” of a hazardous waste storage “facility” located at the Maryland Air National Guard, 175th Wing Facility at Martin State Airport, 2701 Eastern Boulevard, Baltimore, Maryland 21220, as these terms are defined by COMAR 26.13.01.03B.
15. Respondent is and has been, at all times relevant to the allegations set forth in this CAFO, a “generator” of, and has 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.
16. On April 27-28, 2011, EPA representatives conducted Compliance Evaluation Inspections (“CEI”) of the Facility to assess compliance with Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939e, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the federally authorized MdHWMR requirements set forth at COMAR, Title 26, Subtitle 13, *et seq.*
17. On August 25, 2011, EPA sent Respondent an information request letter (“IRL”) pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), regarding generation and management of hazardous wastes observed during EPA’s April 27-28, 2011 CEI of the Facility. Respondent replied to this request in a letter dated October 18, 2011.
18. On March 20, 2012, EPA sent Respondent a “Request to Show Cause” letter providing Respondent with an opportunity to discuss alleged violations of Subtitle C of RCRA, the federal hazardous waste management regulations, and the federally authorized MdHWMR requirements at the Facility as set forth in the letter. On April 11, 2012, Respondent sent EPA a letter via email in response to EPA’s Show Cause letter. Respondent and EPA had a telephone conference to discuss the alleged violations on April 12, 2012. Respondent sent EPA an email dated April 13, 2012, containing additional information relevant to the issues raised by EPA’s Show Cause letter. Based on a review of the April 27-28, 2011 CEI, and the information submitted by Respondent as set forth above, EPA has determined that Respondent have violated Subtitle C of RCRA, the federal hazardous waste management regulations, and the federally authorized MdHWMR requirements at the Facility as set forth below.

COUNT I

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

19. The allegations of Paragraphs 1 through 18 of the CAFO are incorporated herein by reference as though fully set forth at length.
20. 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 unless such person has first obtained a permit for the facility.
21. 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.
22. Respondent’s Facility 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.
23. Pursuant to COMAR 26.13.03.05E(1), generators of hazardous waste who accumulate hazardous waste 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. Pursuant to COMAR 26.13.03.05E(1)(b), the generator must accumulate the waste in containers, tanks, containment buildings, or on 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 the generator must perform 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;

- 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;
 - e. Pursuant to COMAR 26.13.03.05E(1)(g), the generator must comply with the requirements for owners or operators in COMAR 26.13.05.02G, .03, and .04. COMAR 26.13.05.02G requires the owners or operators to, *inter alia*:
 - i. Provide its employees with hazardous waste training; and
 - ii. Prepare and maintain hazardous waste training records.
24. 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.
25. COMAR 26.13.05.09D, referenced in COMAR 26.13.03.05E(1)(d) and 26.13.05.09E and Paragraphs 23 and 24, 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.”
26. At the time of the violations alleged in this CA, Respondent 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 Facility because it did not meet the following conditions of these exemptions:

Storage for Greater than 90 Days

- a. One 55-gallon drum of lubricant waste, a hazardous waste exhibiting the characteristics of ignitability (D001 hazardous waste code) was stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #1, from March 16, 2011 to June 23, 2011 [99 days];
- b. One 55-gallon drum of paint waste, a hazardous waste exhibiting the characteristics of ignitability (D001) and chromium toxicity (D007) was stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #1, from March 16, 2011 to June 23, 2011 [99days];

- c. One 55-Gallon drum of waste sealant, a hazardous waste exhibiting the characteristic of chromium toxicity (D007), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 5, 2011 until at least April 27, 2011 [112 days];
- d. One cardboard container of cleaning solution waste, a hazardous waste exhibiting the characteristics of corrosivity (D002) and chromium toxicity (D007) was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 19, 2011 to October 25, 2011 [279 days];
- e. One cardboard container of rust prevention waste, a hazardous waste exhibiting the characteristic of ignitability (D001), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 23, 2011 to October 25, 2011 [275 days];
- f. One cardboard container of waste sealant, a hazardous waste exhibiting the characteristics of ignitability (D001) and methyl ethyl ketone toxicity (D035), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 23, 2011 to October 25, 2011 [275 days];
- g. One cardboard container of waste polymer, a hazardous waste exhibiting the characteristic of ignitability (D001), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from December 29, 2010 to October 25, 2011 [300 days];
- h. One cardboard container of waste adhesive, a hazardous waste exhibiting the characteristic of ignitability (D001), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 20, 2011 to October 25, 2011 [278 days];
- i. One cardboard container of waste resin and accelerator, a hazardous waste exhibiting the characteristic of chromium toxicity (D007), was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, from January 20, 2011 to October 25, 2011 [278 days];

Hazardous Waste Label and/or Accumulation Dates

- j. At the time of the April 27-28, 2011 CEI, six 55-gallon drums of waste "mogas", a hazardous waste exhibiting the characteristics of ignitability (D001) and benzene toxicity (D018), were stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #1, without hazardous waste labels or hazardous waste accumulation dates;

- k. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of waste “mogas”, a hazardous waste exhibiting the characteristics of ignitability (D001) and benzene toxicity (D018), was stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #1, without a hazardous waste accumulation date;
- l. At the time of the April 27-28, 2011 CEI, neither of Respondent’s drums storing hazardous waste as identified above in Subparagraphs a and b of Paragraph 26 were marked with hazardous waste accumulation start dates;
- m. At the time of the April 27-28, 2011 CEI, two 55-gallon drums of rag and towel waste, a hazardous waste exhibiting the characteristics of cadmium toxicity (D006), chromium toxicity (D007) and lead toxicity (D008), were stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #2, without hazardous waste accumulation dates;
- n. At the time of the April 27-28, 2011 CEI, one 30-gallon drum of paper, paint and tape waste, a hazardous waste exhibiting the characteristic of chromium toxicity (D007) was stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #2, without a hazardous waste accumulation date;
- o. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of waste paint, paper and tape and one 55-gallon drum of sealant and adhesive waste, hazardous wastes exhibiting the characteristic of chromium toxicity (D007), were stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #2, without hazardous waste accumulation dates;
- p. At the time of the April 27-28, 2011 CEI, two 55-gallon drums of waste “mogas”, a hazardous waste exhibiting the characteristics of ignitability (D001) and benzene toxicity (D018), were stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #2, without hazardous waste labels or hazardous waste accumulation dates;
- q. At the time of the April 27-28, 2011 CEI, none of Respondent’s cardboard containers identified above in Subparagraphs d through i of Paragraph 26 were marked with hazardous waste labels or accumulation start dates;
- r. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of rag and towel waste, a hazardous waste exhibiting the characteristics of cadmium toxicity (D006), chromium toxicity (D007) and lead toxicity (D008), was stored by Respondent at the Facility’s Main Hazardous Waste Storage Area, Locker #3, without a hazardous waste accumulation date;

- s. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of sealant and adhesive waste, a hazardous waste exhibiting the characteristic of chromium toxicity (D007) was stored by Respondent at the Facility's Main Hazardous Waste Storage Area, Locker #3, without a hazardous waste accumulation date;
- t. At the time of the April 27-28, 2011 CEI, two 55-gallon drums were being stored by Respondent at the Facility's Hazardous Materials Pharmacy, without hazardous waste labels or hazardous waste accumulation dates (the drums had labels marking them as non-regulated waste), one of which contained waste aerosol paint, a hazardous waste exhibiting the characteristics of ignitability (D001) and chromium toxicity (D007), while the other contained lubricant waste, a hazardous waste exhibiting the characteristic of ignitability (D001);

Satellite Accumulation Issues

- u. At the time of the April 27-28, 2011 CEI, two 55-gallon drums of rag and towel waste, a hazardous waste exhibiting the characteristics of cadmium toxicity (D006), chromium toxicity (D007) and lead toxicity (D008), were stored by Respondent at the Facility's Building 3010, C-130 Shop, in excess of 55-gallons and therefore fail to qualify for the satellite accumulation exemption;
- v. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of waste JP-8 fuel, a hazardous waste exhibiting the characteristics of ignitability (D001) and benzene toxicity (D018), was stored by Respondent at the Facility's Building 2110, in a shed outside the Refueler Maintenance Shop (Bay 5) even though the shed is not at or near the point of generation and therefore the drum fails to qualify for the satellite accumulation exemption;
- w. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of waste diesel fuel, a hazardous waste exhibiting the characteristics of ignitability (D001) and benzene toxicity (D018), was stored by Respondent outside the Facility's Building 1130 (A.G.E. Shop) even though the waste was generated inside the A.G.E. Shop. Such drum was not at or near the point of generation and therefore fails to qualify for the satellite accumulation exemption;
- x. At the time of the April 27-28, 2011 CEI, one 55-gallon drum of paint liquid waste, a hazardous waste exhibiting the characteristics of ignitability (D001) and chromium toxicity (D007), was stored by Respondent in the Facility's Paint Booth, next to the A.G.E. Shop. A sign above the drum indicated it was a satellite accumulation area although the drum itself did not have any readable markings to denote the contents nor did it have a hazardous waste label. Therefore the drum fails to qualify for the satellite accumulation;

Failure to Maintain Facility to Minimize Release

- y. As part of the 90-day storage exemption, COMAR 26.13.03.05E(1)(g), a generator of hazardous waste must design, construct, maintain and operate its facility 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 as set forth in COMAR 26.13.05.03B. Based on the results of the April 27-28, 2011 CEI, the inspector found a fine layer of grit, a hazardous waste exhibiting the characteristics of cadmium toxicity (D006), on and around the workspace and floor of the Avionics Building (Building 2080). The presence of such grit on the floor and workspace of Building 2080 indicates that Respondent was not operating the Facility in a manner to minimize the release of hazardous waste; and

Hazardous Waste Training

- z. As part of the 90-day storage exemption, COMAR 26.13.03.05E(1)(g), a generator of hazardous waste must conduct annual hazardous waste refresher training for facility personnel who manage hazardous waste as required by COMAR 26.13.05.02G(3). Based on the results of the April 27-28, 2011 CEI and follow-up correspondence with Respondent, EPA has determined that Respondent failed to provide such refresher training to six (6) of seventy-seven (77) employees for 2008, six (6) of eighty-three (83) employees in 2009, and eleven (11) of seventy-three (73) employees in 2010.
27. As set forth above in Paragraph 26, from at least December 31, 2008 (the date of violation for the 2008 annual refresher training violation set forth in Subparagraph 26.z, above) through at least October 25, 2011, Respondent 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 Maintain the Facility in a Manner to Minimize the Possibility of a Release)

28. The allegations of Paragraphs 1 through 27 of the CAFO are incorporated herein by reference as though fully set forth at length.
29. COMAR 26.13.05.03B requires owners and operators of hazardous waste facilities to design, construct, maintain and operate its facility 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.

30. At the time of the April 27-28, 2011 CEI, representatives of EPA discovered that a fine layer of grit, a hazardous waste exhibiting the characteristics of cadmium toxicity (D006) was on and around the workspace and floor of the Avionics Building (Building 2080) at the Facility.
31. The hazardous waste grit (D006) identified above in Paragraph 30 could be released to the air, water, or surface water because it was located near a doorway at the Avionics Building (Building 2080) at the Facility.
32. The presence of such grit on the floor and workspace of Building 2080 as described in Paragraphs 30-31, above, indicates that Respondent was not operating the Facility in a manner 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.
33. Respondent's failure to operate the Facility in a manner 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 as set forth above in Paragraphs 30-32, above, is a violation of COMAR 26.13.05.03B.

COUNT III

(Failure to Provide Annual Hazardous Waste Refresher Training)

34. The allegations of Paragraphs 1 through 33 of the CAFO are incorporated herein by reference as though fully set forth at length.
35. COMAR 26.13.05.02G(1) requires the owners or operators of a treatment storage or disposal facility to ensure that, *inter alia*, facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the hazardous waste management requirements of COMAR 26.13.05.
36. COMAR 26.13.05.02G(3) requires the owners or operators of a treatment, storage or disposal facility to ensure that, *inter alia*, facility personnel take part in an annual review of the initial training required by COMAR 26.13.05.02G(1).
37. Respondent employed personnel at the Facility who were required to have annual hazardous waste management refresher training for the calendar years 2008, 2009 and 2010.
38. Respondent failed to provide certain of their Facility personnel with annual hazardous waste management refresher training for calendar years 2008, 2009, and 2010 as set forth above in Subparagraph 26.z, above.

39. Respondent's failure to provide annual hazardous waste refresher training for three calendar years as alleged in Paragraph 38, above, constitutes three violations of COMAR 26.13.05.02G(3).

COUNT IV

*(Failure to Maintain Method to Track Accumulation Dates
for Universal Waste Batteries)*

40. The allegations of Paragraphs 1 through 39 of the CAFO are incorporated herein by reference as though fully set forth at length.
41. COMAR 26.13.10.17B(3) requires that small quantity handlers of universal waste shall maintain a method to track the accumulation dates for various universal wastes, including batteries, by using one of the methods set forth therein.
42. COMAR 26.13.01.03B(72-2) defines a "small quantity handler of universal waste" to mean a universal waste handler that does not accumulate 5,000 kilograms or more of universal waste at any time during a calendar year.
43. At all times relevant to the counts set forth in this CAFO, Respondent was a small quantity handler of universal waste as defined in COMAR 26.13.01.03B(72-2).
44. COMAR 26.13.01.03B(89-1) defines "universal waste" to include hazardous waste batteries described in COMAR 26.13.10.07, which becomes a waste on the date it is discarded or the date its handler decides to discard it.
45. At the time of the April 27-28, 2011 CEI, Respondent was storing in the Main Hazardous Waste Storage Area, Locker 4:
- a. One cardboard container of lithium batteries without a hazardous waste accumulation date on either the container or the batteries; and
 - b. One nickel cadmium battery that was not dated with a hazardous waste accumulation date.
46. The lithium batteries and cadmium battery identified above in Paragraph 45, above, are waste batteries as described in COMAR 26.13.10.07, and universal wastes as set forth in COMAR 26.13.01.03B.
47. Respondent failed to maintain a method for tracking the accumulation dates for the universal waste batteries described in Paragraph 45, above.
48. Respondent failure to store universal waste batteries in accordance with an approved

method for tracking accumulation dates for such waste was a violation of COMAR 26.13.10.17B(3).

COUNT V

(Failure to Maintain Method to Track Accumulation Dates for Universal Waste Lamps)

49. The allegations of Paragraphs 1 through 48 of the CAFO are incorporated herein by reference as though fully set forth at length.
50. 40 C.F.R. § 273.15(c) requires that small quantity handlers of universal waste maintain a method to track the accumulation dates for various universal wastes, including lamps, by using one of the methods set forth therein.
51. 40 C.F.R. § 273.9 defines a “small quantity handler of universal waste” to mean a universal waste handler that does not accumulate 5,000 kilograms or more of universal waste at any time.
52. At all times relevant to the counts set forth in this CAFO, Respondent was a small quantity handlers of universal waste as defined in 40 C.F.R. § 273.9.
53. 40 C.F.R. § 273.9 defines “universal waste” to include hazardous waste lamps described in 40 C.F.R. § 273.5, which becomes a waste on the date it is discarded or the date its handler decides to discard it.
54. At the time of the April 27-28, 2011 CEI, the following universal waste lamps were being stored by Respondent without an approved method to track the accumulation dates for such lamps:
 - a. One four foot cardboard container of fluorescent light tube universal waste lamps was being stored in Civil Engineering (Building 2100) without a hazardous waste accumulation date on either the containers or the lamps; and
 - b. One eight foot cardboard container of universal waste fluorescent lamps labeled as “Universal Waste, Fluorescent Lamps” was being stored in Civil Engineering (Building 2100) without the correct accumulation start date. The label on the container listed the start date as July 17, 2008 which Respondent asserts is probably a leftover label on a used container box which Respondent had purchased from a vendor and failed to remove the old accumulation date label and replace it with one showing the actual accumulation start date for this container of universal waste.
55. The lamps identified above in Paragraph 54, above, are waste lamps as described in 40 C.F.R. § 273.5 and universal wastes as set forth in 40 C.F.R. § 273.9.

56. At the time of the CEI, Respondent failed to maintain a method for tracking the accumulation dates for the universal waste lamps set forth in Paragraph 54, above.
57. Respondent's failure to store universal waste lamps in accordance with an approved method for tracking accumulation dates for such waste was a violation of 40 C.F.R. § 273.15(c).

COUNT VI

(Failure to Properly Label Universal Waste Batteries)

58. The allegations of Paragraphs 1 through 57 of the CAFO are incorporated herein by reference as though fully set forth at length.
59. COMAR 26.13.10.17A(2)(a) requires that small quantity handlers of universal waste batteries label or mark each universal waste battery not in a container and each container in which universal waste batteries are being held with the phrases: "Universal Waste – Battery(ies)"; "Waste Battery(ies)"; or "Used Battery(ies)".
60. At the time of the April 27-28, 2011 CEI, the following universal waste batteries were being stored without being properly labeled or marked as required by COMAR 26.13.10.17A(2)(a):
 - a. One cardboard container of lithium batteries and one nickel cadmium battery being stored in the Main Hazardous Waste Storage Area, Locker 4; and
 - b. Six cardboard containers of lithium batteries being stored at the Hazardous Materials Pharmacy.
61. Respondent's storage of universal waste batteries which were not properly labeled or marked as required by COMAR 26.13.10.17A(2)(a) as set forth in Paragraph 60, above, was a violation of COMAR 26.13.10.17A(2)(a).

COUNT VII

(Failure to Properly Label Universal Waste Lamps)

62. The allegations of Paragraphs 1 through 61 of the CAFO are incorporated herein by reference as though fully set forth at length.
63. 40 C.F.R. § 273.14(e) requires that small quantity handlers of universal waste lamps label each universal waste lamp, or container package of such universal waste lamps be labeled or marked with one of the following phrases: "Universal Waste – Lamp(s)"; "Waste Lamp(s)"; or "Used Lamp(s)".

64. At the time of the April 27-28, 2011 CEI, one four foot cardboard container of fluorescent light tube universal waste lamps was being stored in the Civil Engineering Building (Building 2100) without being properly labeled or marked as required by 40 C.F.R. § 273.14(e).
65. Respondent's storage of universal waste lamps that were not properly labeled or marked as required by 40 C.F.R. § 273.14(e) was a violation of 40 C.F.R. § 273.14(e).

IV. CIVIL PENALTY

66. Respondent agrees to pay a civil penalty in the amount of **Seventy-Five Thousand Dollars (\$75,000.00)**, 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. Respondent must pay such civil penalty no later than sixty (60) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
67. The civil penalty settlement amount set forth in Paragraph 66, 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").
68. Payment of the civil penalty set forth in Paragraph 66, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, *i.e.*, RCRA-03-2012-0223;
 - 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 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**"

- f. 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

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

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

- h. Payment may be made using the Intra Governmental Payment and Collection application (IPAC), ALC 68-01-0727, and Treasury Symbol 681099. Please include the Docket Number of this action (Docket No. RCRA-03-2012-0223) in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.
- i. Additional payment guidance is available at:

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

69. 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.

70. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondent's failure to timely pay the civil penalty set forth in Paragraph 66, above, shall be resolved by negotiation between EPA and Respondent or by referral to the General Accounting Office (since 2004, referred to as the Government Accountability Office (PL-108-271)).

V. CERTIFICATIONS

71. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this CA, is in

compliance with the provisions of RCRA, Subtitle C, 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.

VI. OTHER APPLICABLE LAWS

72. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon them by applicable federal, state, or local law and/or regulation.
73. Nothing in this CAFO shall be interpreted to require obligation or payment of any funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

VII. RESERVATION OF RIGHTS

74. 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. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend themselves in any such action.
75. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action of proceeding to enforce or seek compliance with this CA and accompanying FO.

VIII. FULL AND FINAL SATISFACTION

76. 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 CA.

IX. PARTIES BOUND

77. This CAFO shall apply to and be binding upon 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 CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CAFO.

X. EFFECTIVE DATE

78. 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

79. 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:

Maryland Air National Guard, 175th Wing:

Date: 26 Sep 12

By: Scott L. Kelly
Scott L. Kelly, Brig. Gen., MDANG
175th Wing Commander

For the Complainant:

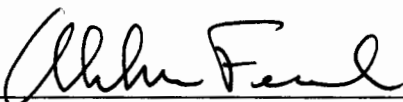
U.S. Environmental Protection Agency, Region III:

Date: 9/27/12

By: James Heenehan
James Heenehan
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: 9/27/12

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

In the Matter of:	:	
	:	
	:	Docket No. RCRA-03-2012-0223
	:	
Maryland Air National Guard, 175th Wing, U.S. Air Force	:	
	:	
Respondent	:	
	:	
	:	Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a) and (g)
175th Wing 2701 Eastern Boulevard Baltimore, Maryland 21220	:	
	:	
Facility	:	
	:	

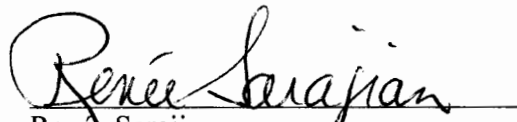
FINAL ORDER

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Maryland Air National Guard, 175th Wing, 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 of **Seventy-Five Thousand Dollars (\$75,000.00)**, 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.

9/28/12
Date:

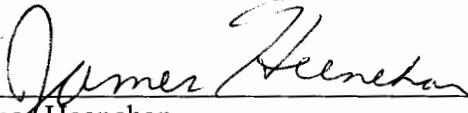

Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

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: Maryland Air National Guard, 175th Wing* (Docket No. RCRA-03-2012-0223), 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, *Maryland, Air National Guard, 175th Wing*, via UPS to the below-listed address:

For Respondent: Brigadier General Scott Kelly
175th Wing Headquarters
2701 Eastern Boulevard
Baltimore, MD 21220

9/28/12
Date


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

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2012 SEP 28 AM 11:27

RECEIVED