



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 10 2013

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Lawrence N. Bluth  
Executive Vice President & General Counsel  
Penske Corporation  
2555 Telegraph Road  
Bloomfield Hills, Michigan 48302

Re: Penske Racing South, Inc.  
Consent Agreement and Final Order, Docket Number: RCRA-04-2013-4011(b)

Dear Mr. Bluth:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CA/FO was effective upon filing with the RHC and payment of the \$35,000.00 civil penalty is due within thirty (30) days of the effective date of the CA/FO.

As a reminder, copies of any payments should be submitted to both of the following individuals:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

And to:

Quantindra Smith  
RCRA & OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

If you have any questions, please feel free to contact me at (404) 562-9441 or [dixit.naeha@epa.gov](mailto:dixit.naeha@epa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Naeha Dixit".

Naeha Dixit  
Assistant Regional Counsel

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2013-4011(b)
	)	
Penske Racing South, Inc.	)	
200 Penske Way	)	Proceeding Under Section 3008(a) of the
Mooreville, NC 28115	)	Resource Conservation and Recovery Act,
EPA ID No.: EPA ID #NCD 986 185 585	)	42 U.S.C. § 6928(a)
	)	
Respondent	)	
_____	)	

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the General Statutes of North Carolina (N.C. Gen. Stat.) Chapter 130A, Article 9 [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and North Carolina Hazardous Waste Rules promulgated pursuant thereto and set forth at 15A North Carolina Administrative Code (NCAC) Subchapter 13A Hazardous Waste Management [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] and 15A NCAC Subchapter 13A [40 C.F.R. Parts 260 through 270, & 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

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EPA REGION 4  
2013 SEP 10 AM 9:52  
HEARING CLERK

## II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Penske Racing South, Inc., a corporation organized under the laws of the State of Delaware. Respondent operates a business located at 200 Penske Way, Mooresville, North Carolina (Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized state program are found at N.C. Gen. Stat. Sections 130A-290 to 130A-309 [RCRA, 42 U.S.C. §§ 6901 *et. seq.*], and the North Carolina Hazardous Waste Rules, which are found in 15A NCAC Subchapter 13A [40 C.F.R. Parts 260-268, 270 and 279].
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. The N.C. Gen. Stat. § 130A-294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15A NCAC 13A .0107 [40 C.F.R. Part 262].
12. The N.C. Gen. Stat. Sections 130A-290 to 130A-309 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 15A NCAC 13A .0109 (permitted) and 15A NCAC 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A NCAC 13A .0106(a) [40 C.F.R. § 261.4(b)].
15. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.30], a solid waste is a listed “hazardous waste” if it is listed 15A NCAC 13A .0106(d) [40 C.F.R. Part 261, Subpart D].
16. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.20], solid waste that exhibit any of the characteristics identified in 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.20-24] are characteristic hazardous waste and are provided with the EPA hazardous waste numbers D001 through D043.
17. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.21(b)], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
18. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of barium is a hazardous waste and is identified with the EPA Hazardous Waste Number D005.
19. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of cadmium is a hazardous waste and is identified with the EPA Hazardous Waste Number D006.
20. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of lead is a hazardous waste and is identified with the EPA Hazardous Waste Number D008.
21. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of mercury is a hazardous waste and is identified with the EPA Hazardous Waste Number D009.
22. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of benzene is a hazardous waste and is identified with the EPA Hazardous Waste Number D018.
23. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of methyl ethyl ketone is a hazardous waste and is identified with the EPA Hazardous Waste Number D035.
24. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of tetrachloroethylene is a hazardous waste and is identified with the EPA Hazardous Waste Number D039.

25. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.24(b)], a solid waste that exhibits the characteristic of toxicity due to the concentration level of trichloroethylene is a hazardous waste and is identified with the EPA Hazardous Waste Number D040.
26. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31(a)], a solid waste is a listed hazardous waste identified with the EPA Hazardous Waste Number F003 if it is one of the following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixture/blend containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
27. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31(a)], a solid waste is a listed hazardous waste identified with the EPA Hazardous Waste Number F005 if it is one of the following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
28. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in 15A NCAC 13A.0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.”
29. Pursuant to 15A NCAC 13A .0102(c)(1) [40 C.F.R. § 260.10], a “facility” means all contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
30. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], which references N.C. Gen. Stat. § 130A-290(a)(22), a “person” means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency or other legal entity.
31. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
32. Pursuant to 15A NCAC 13A .0118(a) [40 C.F.R. § 279.1], which references N.C. Gen. Stat. § 130A-290(b)(5), “used oil” is any oil that has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further used oil and is economically recyclable.
33. Pursuant to 15A NCAC 13A .0018(c) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”

34. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11].
35. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).
36. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates 15A NCAC 13A .0110(i) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
37. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
38. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)], a generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is a Small Quantity Generator (SQG) and may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, as required by N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the “SQG Permit Exemption”).
39. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(5)(ii)(A) and (C)], which is a condition of the SQG Permit Exemption, a generator is required to post the name and telephone number of the emergency coordinator and the telephone number of the fire department next to the telephone.
40. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], which incorporates 15A NCAC 13A .0110(c) [40 C.F.R. § 265.37], and is a condition of the SQG Exemption, a generator is required to attempt to make arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of such organizations: to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes; agreements with state emergency response teams, emergency response contractors, and equipments suppliers; and arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

#### IV. EPA ALLEGATIONS AND DETERMINATIONS

41. Respondent is a “person” as defined in 15A NCAC 13A .0102(b), which references N.C. Gen. Stat. § 130A-290 [40 C.F.R. § 260.10].
42. Respondent is the “owner/operator” of a “facility” located in Mooresville, North Carolina, as those terms are defined in 15A NCAC 13A .0102(b) and 15A NCAC 13A .0102(c)(1) [40 C.F.R. § 260.10].
43. Respondent prepares National Association for Stock Car Auto Racing (NASCAR) and IndyCar racecars for the Penske Racing Team events. Facility operations include preparing and painting racecars, washing semi-trucks and tractor trailers, and loading and unloading items needed by the race teams at each offsite venue. The Facility’s NASCAR operations include three preparation bays and three painting bays, and the IndyCar operations include two preparation bays and one painting bay.
44. Respondent is a “generator” of “hazardous waste” as those terms are defined in 15A NCAC 13A .0102(b) and 15A NCAC 13A .0106(a) [40 C.F.R. §§ 260.10 and 261.3].
45. Respondent generates waste paint related material, which is a hazardous waste identified with the EPA Hazardous Waste Numbers D001, D005, D006, D018, D035, D039, D040, F003, and F005.
46. Respondent generated a hazardous waste identified with the EPA Hazardous Waste Number D009 from crushing fluorescent bulbs.
47. Respondent most recently notified as a SQG of hazardous waste on February 9, 2011.
48. Respondent is a generator of used oil.
49. On December 13, 2011, inspectors from the EPA and North Carolina Department of Environment and Natural Resources conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility.
50. During the CEI, the inspectors observed one 150-gallon storage tote of used oil in the Facility’s Truck Wash Bay. This tote was not labeled or clearly marked with the words “Used Oil.”
51. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0018(c) [40 C.F.R. § 279.22(c)(1)], by storing used oil in a container that was not labeled or marked clearly with the words “Used Oil.”
52. At the time of the CEI, Respondent had not made a hazardous waste determination on the following solid wastes:
  - a. Grit blast waste generated near the Truck Wash Bay. Subsequent toxicity characteristic leaching procedure (TCLP) analytical testing revealed that the grit blast waste material exhibited the hazardous waste characteristic of toxicity for elevated concentrations of lead (D008) and cadmium (D006).



- b. High intensity discharge bulbs, which were generated at the Facility and thrown into the trash.
53. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid wastes generated at its Facility.
54. During the CEI, the inspectors observed the following SAA containers of hazardous waste were not closed properly:
- a. One (1) 10-gallon container of hazardous waste paint liquids in the workroom between the third set of NASCAR preparation and paint booths. The container's funnel was not properly closed.
  - b. One (1) 5-gallon container of worn out gun cleaner on the floor between the flammable cabinet and the distillation unit in the Facility's hazardous waste storage area.
  - c. Three (3) boxes of used fluorescent bulbs in the Facility's air compressor room.
55. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of 15A NCAC 13A .0110(i) [40 C.F.R. § 265.173(a)].
56. During the CEI, inspectors observed the following SAA containers were not properly labeled with the words "Hazardous Waste" or with other words that identified the contents of the containers:
- a. One (1) 5-gallon container for accumulating hazardous waste paint liquids in the workroom between the first set of NASCAR preparation and paint booths.
  - b. One (1) 5-gallon flammable-type container for accumulating hazardous waste paint solids in the workroom between the first set of NASCAR preparation and paint booths.
  - c. One (1) 5-gallon container for accumulating hazardous waste paint liquids in the workroom between the second set of NASCAR preparation and paint booths.
  - d. One (1) 5-gallon flammable-type container for accumulating hazardous waste paint solids in the workroom between the second set of NASCAR preparation and paint booths.
  - e. One (1) 10-gallon container for accumulating hazardous waste paint liquids in the workroom between the third set of NASCAR preparation and paint booths.

- f. One (1) 5-gallon flammable-type container for accumulating hazardous waste paint solids in the workroom between the third set of NASCAR preparation and paint booths.
- g. One (1) 35-gallon container for accumulating hazardous waste paint solids in the hazardous waste storage area next to the solvent distillation unit.
- h. One (1) 5-gallon container for accumulating hazardous waste worn out gun cleaner in the hazardous waste storage area between the flammable cabinet and the distillation unit.
- i. One (1) 10-gallon container for accumulating hazardous waste paint liquids in the IndyCar paint booth.
- j. Three (3) cardboard boxes for accumulating hazardous waste used fluorescent bulbs in the Air Compressor Room.

57. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(ii)].

58. During the CEI, the inspectors noted that hazardous waste dust generated by the Facility's fluorescent bulb crusher was not being properly accumulated in the 55-gallon SAA drum as the unit was designed.

59. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not accumulating hazardous waste in a satellite accumulation container as set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)].

60. During the CEI, the inspectors noted that Respondent had not posted the name and telephone number of the emergency coordinator or the telephone number of the fire department next to the telephones or evacuation maps, which were located throughout the Facility.

61. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SQG Permit Exemption by not posting the name and telephone number of the emergency coordinator and the telephone number of the fire department next to the telephone as set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(5)(ii)].

62. During the CEI, the inspectors noted that Respondent had not attempted to make arrangements to familiarize police, fire departments, and emergency response teams with the layout of the Facility, the properties of hazardous waste handled at the Facility and associated hazardous, places where Facility personnel would normally be working, the entrances to roads inside the Facility, and possible evacuation routes; agreements with State emergency response teams,

emergency response contractors, and equipments suppliers; and arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

63. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SQG Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(4)], by not attempting to make the arrangements and agreements required by 15A NCAC 13A .0110(c) [40 C.F.R. § 265.37].

## V. TERMS OF AGREEMENT

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

64. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
65. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
66. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
67. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
68. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
69. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
70. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
71. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
72. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
73. Each party will pay its own costs and attorneys' fees.

## VI. PAYMENT OF CIVIL PENALTY

74. Respondent consents to the payment of a civil penalty in the amount of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
75. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

76. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

77. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.

- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

78. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

## **VII. PARTIES BOUND**

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

## **VIII. RESERVATION OF RIGHTS**

82. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
83. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
84. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

## **IX. OTHER APPLICABLE LAWS**

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

## **X. SERVICE OF DOCUMENTS**

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

Naeha Dixit  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9441

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

Lawrence N. Bluth  
Executive Vice President & General Counsel  
Penske Corporation  
2555 Telegraph Road  
Bloomfield Hills, Michigan 48302  
(248) 648-2130

## **XI. SEVERABILITY**

88. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

## **XII. EFFECTIVE DATE**

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

[CONTINUED ONTO NEXT PAGE]

*In the matter of Penske Racing South, Inc., Docket No. RCRA-04-2013-4011(b):*

**AGREED AND CONSENTED TO:**

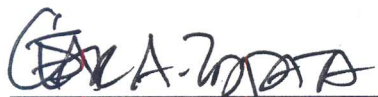
**Penske Racing South, Inc.**

By:  \_\_\_\_\_

Dated: 8-28-13

Timothy J. Cindric  
President

**United States Environmental Protection Agency**

By:  \_\_\_\_\_

Dated: 9/4/13

César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2013-4011(b)
	)	
Penske Racing South, Inc.	)	
200 Penske Way	)	Proceeding Under Section 3008(a) of the
Mooreville, North Carolina 28115	)	Resource Conservation and Recovery Act,
EPA ID No.: EPA ID # NCD 986 185 585	)	42 U.S.C. § 6928(a)
	)	
Respondent	)	
_____	)	

**FINAL ORDER**

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

**BEING AGREED, IT IS SO ORDERED** this 9 day of Sept., 2013.

BY: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer  
EPA Region 4

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Penske Racing South, Inc., Docket Number: RCRA-04-2013-4011(b), and have served the parties listed below in the manner indicated:

Naeha Dixit  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

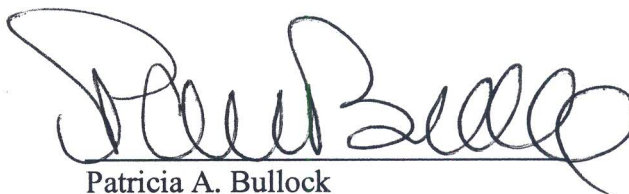
(Via EPA's electronic mail)

Lawrence N. Bluth  
Executive Vice President & General Counsel  
Penske Corporation  
2555 Telegraph Road  
Bloomfield Hills, Michigan 48302

(Via Certified Mail - Return Receipt Requested)

Date:

9-10-13



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511