

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:	)	Docket No. RCRA-10-2024-0073
	)	
	)	
W. R. Grace & Co.-Conn.	)	<b>CONSENT AGREEMENT</b>
	)	
Albany, Oregon	)	
	)	
Respondent.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Solid Waste Disposal Act, amended by the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a).

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Oregon final authorization to administer and enforce a hazardous waste program and to carry out such a program in lieu of the federal program. The Administrator of the EPA (“Administrator”) first granted Oregon final authorization on January 30, 1986 (51 Fed. Reg. 3779) and has authorized subsequent changes to Oregon’s program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the state of Oregon’s federally authorized hazardous waste program. The Oregon Administrative Rules (OAR) at Chapter 340, Division 100 pertinent to this enforcement action were last authorized by the Administrator on March 10, 2022 (87 Fed. Reg. 13644). EPA authorized

Oregon's revised hazardous waste management program through July 12, 2017. These regulations became effective on April 11, 2022.

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to the Oregon Department of Environmental Quality ("ODEQ").

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," ("Consolidated Rules of Practice") 40 Code of Federal Regulations ("C.F.R.") Part 22, EPA issues, and W. R. Grace & Co.-Conn. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to delegation No. 8-9-A dated May 11, 2020 to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part IV of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA.

### **III. RCRA STATUTORY AND REGULATORY FRAMEWORK**

3.1. RCRA Subtitle C, RCRA Sections 3001 through 3024, 42 U.S.C. §§ 6921–6939, sets forth a “cradle-to-grave” program for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

3.2. Section 3001 of RCRA, 42 U.S.C. § 6921, authorizes the Administrator to promulgate regulations identifying characteristics of hazardous waste and listing hazardous waste. Pursuant to this authority, the Administrator has promulgated regulations defining what materials are “solid wastes,” and of these “solid wastes,” what wastes are regulated as “hazardous wastes.” These regulations are codified at 40 C.F.R. Part 261.

3.3. Section 3002 of RCRA, 42 U.S.C. § 6922, authorizes the Administrator to promulgate regulations establishing requirements applicable to generators of hazardous wastes identified or listed under 40 C.F.R. Part 261. These requirements include (but are not limited to) determining whether a waste is hazardous, container management, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies. These regulations are codified principally at 40 C.F.R. Part 262.

3.4. Section 3004 of RCRA, 42 U.S.C. § 6924, authorizes the Administrator to promulgate regulations establishing requirements applicable to owners and operators of facilities that treat, store, or dispose of hazardous waste identified or listed under 40 C.F.R. Part 261. These regulations are codified principally at 40 C.F.R. Parts 264 and 265.

3.5. Pursuant to the authority under Section 3005 of RCRA, 42 U.S.C. § 6925, the Administrator has promulgated regulations requiring owners or operators of a hazardous waste treatment, storage, or disposal facility to obtain a permit issued pursuant to this section, and prohibiting the treatment, storage, or disposal of any hazardous waste except in accordance with such a permit. These regulations are codified at 40 C.F.R. Part 270.

3.6. 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 with respect to those requirements.

3.7. The requirements of 40 C.F.R. Parts 260 to 266, 268, 270 and 273 and Subpart A and Subpart B of Part 124 promulgated through June 30, 2015, are adopted by reference in OAR 340-100-0002(1) and are applicable in Oregon, except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124, and 142. For those OAR requirements that are adopted by reference, citations will be to the C.F.R., for those OAR-adopted requirements that have modified the C.F.R. and which EPA has authorized, citations will be to the OAR.

3.8. A “person” is defined as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body. 40 C.F.R. § 260.10.

3.9. “Facility” is defined as all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. 40 C.F.R. § 260.10.

3.10. “Operator” is defined as the person responsible for the overall operation of a facility and “owner” as “the person who owns a facility or part of a facility.” 40 C.F.R. § 260.10.

3.11. Pursuant to OAR 340-100-0010(2)(r) a “generator” is the person who, by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

3.12. “Treatment” is defined as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. 40 C.F.R. § 260.10.

3.13. Pursuant to OAR 340-100-0010(2)(hh) “storage” or “collection” means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

3.14. Pursuant to OAR 340-100-0010(2)(ee), a “residue” is a solid waste as defined in 40 C.F.R. § 261.2.

3.15. A “solid waste” is any discarded material, as defined by regulation under 40 C.F.R. § 261.2, that is not excluded by regulation under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34. 40 C.F.R. § 261.2(a)(1).

3.16. A “discarded material” is any material which is abandoned, recycled, inherently waste-like, or a military munition, as described in 40 C.F.R. § 261.2. 40 C.F.R. § 261.2(a)(2)(i).

3.17. Pursuant to 40 C.F.R. § 261.2(b) materials are solid wastes if they are abandoned by being disposed of, burned or incinerated, if they are accumulated, stored or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated, or if they are sham recycled.

3.18. Pursuant to 40 C.F.R. § 261.1(c)(1), “spent material” is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

3.19. Pursuant to 40 C.F.R. § 261.1(c)(7) and 40 C.F.R. § 261.2(c) Table 1, a “spent material” is a solid waste when recycled by being burned for energy recovery.

3.20. Pursuant to OAR 340-100-0010(t), a “hazardous waste” means a hazardous waste as defined at 40 C.F.R. § 261.3 and OAR 340-102-0011. A “solid waste” is a “hazardous waste” if it is not excluded under OAR 340-101-0004 or 40 C.F.R. § 261.4; and if it is listed under Subpart D of 40 C.F.R. Part 261; and/or if the waste is a characteristic hazardous waste under Subpart C of 40 C.F.R. Part 261.

3.21. Pursuant to 40 C.F.R. § 264.1031, “equipment” means each valve, pump, compressor, pressure relief device, sampling connection system, open ended valve or line, or flange or other connector, and any control devices or systems required by Subpart BB of 40 C.F.R. Parts 264 or 265.

3.22. Pursuant to 40 C.F.R. § 260.10 a “container” is any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

3.23. Pursuant to 40 C.F.R. § 260.10 a “tank” is a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

#### **IV. FACTUAL AND GENERAL LEGAL ALLEGATIONS**

4.1. The facts set forth below are relevant and applicable during the entire time period relevant to this matter, from approximately March 1, 2019 through approximately December 31, 2024 (“Relevant Time Period”), unless otherwise noted.

##### **Respondent’s Former Facility in Albany, Oregon**

4.2. Respondent is a privately held corporation incorporated in the State of Connecticut, with its headquarters located in Columbia, Maryland.

4.3. Respondent’s manufacturing facility was located at 1290 Industrial Way, Albany, Oregon 97322 (“Facility”), and was assigned EPA ID Number ORD085979474.

4.4. On or about November 29, 2023, Respondent provided notice to the Oregon Department of Environmental Quality that it expected to begin closure activities at the Facility in January 2024.

4.5. On or about January 8, 2024, Respondent ceased all manufacturing operations at the Facility.

4.6. On or about May 23, 2024, Respondent notified the State regarding completed closure activities at the Facility.

4.7. On or about December 31, 2024, Respondent sold the Facility to a third party.

4.8. Large-scale manufacturing operations at the Facility took place in Building 2.

##### **Building 2 Batch Operations and Hazardous Waste Management**

4.9. Respondent manufactured various chemicals and materials in different batches in Building 2.

4.10. Respondent's batch chemical manufacturing operations created, among other things, chemical intermediates for active pharmaceutical ingredients and dietary supplements.

**Used Solvent Storage and Treatment in Tanks and Containers at the Facility**

4.11. Respondent utilized solvents to solubilize (dissolve) or mobilize other constituents during various manufacturing steps. The solvents used included ones that, if they became solid wastes after use, were F-listed and/or characteristic hazardous wastes.

4.12. At times during the Relevant Time Period, after the conclusion of certain manufacturing processes, Respondent temporarily held used solvents in approximately 1.25 to 1.32 m<sup>3</sup> intermediate bulk containers ("Totes") or other smaller containers that at the time were not involved with or managed for manufacturing processes, operations, or purposes. Some of the used solvents in these containers had an average volatile organic ("VO") concentration of 500 parts per million by weight ("ppmw") or greater.

4.13. The used solvent materials in the containers described in paragraph 4.12 were (a) conveyed directly to the bulk hazardous waste tanks T400 and/or T401, (b) conveyed to the Facility's wastewater treatment system, or (c) conveyed to a tank for neutralization, after which the neutralized materials were conveyed to the bulk hazardous waste tanks T400 and/or T401. Materials conveyed to the bulk hazardous waste tanks T400 and/or T401 were sent off-site to be burned for energy recovery.

4.14. Respondent, after the removal of certain used solvents from equipment that was being used for manufacturing processes, at times added such materials to the eight tanks listed below ("8 Tanks") that had a capacity of less than 75 m<sup>3</sup> (and that at the time were not being used for manufacturing processes, operations, or purposes) prior to neutralization or for



neutralization. After neutralization, the used solvents described in this paragraph were transferred to the Facility's bulk hazardous waste tanks T400 and/or T401 and sent offsite to be burned for energy recovery. Certain used solvents described in this paragraph had a maximum organic vapor pressure of 76.6 kPa and an average VO concentration of 500 ppmw or greater.

R-201	T-202
R-206	T-203
R-207	T-206
T-201	T-207

4.15. Respondent did not manage these 8 Tanks and their associated tank systems as hazardous waste accumulation units.

4.16. None of the containers in paragraph 4.12 were labeled with accumulation dates and neither the containers nor the 8 Tanks managing hazardous waste in paragraphs 4.12 and 4.14 were labeled "hazardous waste."

#### **EPA Inspection and Information Request**

4.17. On August 2-3, 2021, EPA conducted a RCRA Focused Compliance Inspection ("EPA RCRA Inspection") at the Facility.

4.18. On March 9, 2022, EPA issued an information request letter ("IRL") to Respondent pursuant to RCRA Section 3007, 42 U.S.C. § 6927, requesting information regarding the management of Respondent's hazardous waste at the Facility in Building 2 including certain batch records utilized by Respondent from March 2019 through March 2022.

4.19. On January 12 and October 26, 2022, EPA conducted video teleconferences with Respondent to discuss matters regarding Facility containers, tanks, pieces of equipment and particular waste handling practices.

### **General Legal Allegations**

4.20. The allegations set forth in paragraphs 1.1. through 4.19 above are realleged and incorporated herein by reference.

4.21. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

4.22. Respondent was the “owner” and/or “operator” of the Facility, as defined in OAR 340-100-0002 and 40 C.F.R. § 260.10.

4.23. Respondent was a “generator” of hazardous waste at the Facility as defined in OAR 340-100-0010(2)(r) and 40 C.F.R. § 260.10.

4.24. Respondent notified as a large quantity generator (“LQG”) of hazardous waste at the Facility pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

4.25. Respondent did not have a RCRA hazardous waste permit and did not notify EPA as a hazardous waste storage, treatment, or disposal facility.

4.26. During the Relevant Time Period, Respondent did not meet all of the conditional exemptions for LQGs to treat, store, and/or dispose of hazardous waste without a RCRA hazardous waste permit as set forth in OAR 340-102-0034 and 40 C.F.R. § 262.34<sup>1</sup>.

4.27. Certain spent solvents generated at the Facility, which were managed in containers as described in paragraphs 4.12 and 4.13 and managed in the 8 Tanks as described in

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<sup>1</sup> In this document, the conditions for permit exemption for large quantity generators that accumulate hazardous waste are cited as 40 C.F.R. § 262.34. These are the requirements existing at the time the Oregon Administrative Rules were last authorized by EPA in 2022. (OAR 340-100-0002). These conditions for permit exemption are currently set forth in 40 C.F.R. § 262.17. 81 Fed. Reg. 85808 (November 28, 2016). The 40 C.F.R. § 262.17 conditions have merely been renumbered and, with respect to requirements under subparts I, J, BB and CC, are largely identical to the longstanding prior requirements set forth in 40 C.F.R. § 262.34(a).

paragraph 4.14, were “residue(s)” pursuant to OAR 340-100-0010 and a “solid waste(s)” pursuant to 40 C.F.R. § 261.2.

4.28. The “solid wastes” or “residues” generated at the Facility referenced in paragraph 4.27 were also “hazardous waste” because Respondent’s solvent wastes were listed F002, F003, and/or F005 hazardous wastes described in 40 C.F.R. Part 261 Subpart D, 40 C.F.R. § 261.31, and/or characteristically ignitable, corrosive, and/or toxic hazardous waste as described in 40 C.F.R. Part 261 Subpart C.

## **V. ALLEGED RCRA VIOLATIONS**

### **COUNT 1**

#### **Failure to make hazardous waste determinations**

5.1. The allegations above in paragraphs 1.1 through 4.28 are realleged and incorporated herein by reference.

5.2. The regulation at OAR 340-102-0011 replaces the requirements of 40 C.F.R. § 262.11.

5.3. The regulation at OAR 340-102-0011(2) states in relevant part:

A person who generates a residue as defined in OAR 340-100-0010 must determine if that residue is a hazardous waste using the following method:

- (a) Persons should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4 or OAR 340-101-0004;
- (b) Persons must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261;
- (c) [not applicable]
- (d) Regardless of whether a hazardous waste is listed through application of subsections (2)(b) of this rule, persons must also determine whether the waste is hazardous under Subpart C of 40 C.F.R. Part 261 by (A) Testing or (B) Applying knowledge of the hazardous characteristic of the waste in light of the materials or the process used.

5.4. During the Relevant Time Period, Respondent generated certain “residues” or “solid waste” within the meaning of OAR 340-100-0010(2)(ee), described in paragraphs 4.12-4.13 and 4.14 that were listed and/or characteristic hazardous wastes, at locations in Building 2 of the Facility.

5.5. Respondent’s records did not identify whether certain residues or solid waste, at the point of generation, was (1) a listed hazardous waste; and/or (2) a characteristic hazardous waste.

5.6. Respondent’s failure to determine whether certain residues or solid waste generated in Building 2 was a listed and/or characteristic hazardous waste at the point(s) of generation during the Relevant Time Period constituted separate and distinct violations of OAR 340-102-0011.

## **COUNT 2**

### **Storage and Treatment of Hazardous Waste without a Permit or Interim Status**

5.7. The allegations above in paragraphs 1.1 through 5.6 are realleged and incorporated herein by reference.

5.8. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and OAR 340-105-0001(4)(b)(B), provide that a person owning or operating an existing facility for the treatment, storage, or disposal of characteristic or listed hazardous waste must have a permit or interim status during the active life of the facility.

5.9. During the Relevant Time Period Respondent did not have a permit or interim status, and stored and treated hazardous waste at times in certain containers and tanks, described in Section IV above, containing spent solvents which were F-listed and/or characteristic hazardous waste.

5.10. OAR 340-102-0034 provides a conditional exemption for LQGs to temporarily accumulate hazardous waste onsite for 90 days or less without a permit so long as each of certain conditions is met. This conditional exemption at OAR 340-102-0034(2) requires that a generator must comply with provisions found in 40 C.F.R. Part 262 and each applicable requirement of 40 C.F.R. § 262.34(a)-(f) to avail itself of the exemption from the permitting requirement.

5.11. Respondent did not meet the following LQG conditions (labeled A through I below) for exemption from the permit requirement pursuant to OAR 340-102-0034 and 40 C.F.R. § 262.34:

*A. Subpart I Containers - Inspections*

5.12. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(i), incorporate by reference 40 C.F.R. Part 265 Subpart I, which requires generators to comply with the applicable requirements for hazardous waste placed in containers.

5.13. As a condition of meeting the LQG permit exemption, Subpart I at 40 C.F.R. § 265.174 requires a generator of hazardous waste to, at least weekly, inspect areas where containers are stored looking for leaks and deterioration of containers caused by corrosion or other factors.

5.14. Respondent did not meet the conditional exemption requirement to conduct inspections of certain containers of hazardous waste described in paragraphs 4.12 and 4.13 in compliance with 40 C.F.R. § 265.174, incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, at times during the Relevant Time Period.

*B. Subpart CC Container Air Emission Level 2 Requirements*

5.15. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(i) incorporate by reference 40 C.F.R. Part 265 Subpart CC. Subpart CC at 40 C.F.R. § 265.1087(b)(1)(iii) requires each owner or operator to control air pollutant emissions from a container of hazardous waste with an average volatile organic concentration at the point of waste origination of 500 ppmw or greater, in light material service, having a design capacity greater than .46 m<sup>3</sup> (approximately 121.5 gallons) in accordance with Container Level 2 standards at 40 C.F.R. § 265.1087(d).

5.16. As a condition of meeting the LQG permit exemption, 40 C.F.R. § 265.1087(d)(2) requires that any transfer of hazardous waste out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials.

5.17. Respondent did not meet the conditional exemption requirements for organic air emissions control when transferring certain solvent hazardous wastes out of certain Tote containers described in paragraphs 4.12 and 4.13, according to the requirements for Container Level 2 at 40 C.F.R. § 265.1087(d)(2), incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, during the Relevant Time Period.

### *C. Subpart J Tank Requirements*

5.18. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii) incorporate by reference 40 C.F.R. Part 265 Subpart J, which

requires generators to place hazardous waste in tanks and to comply with the applicable requirements of Subpart J.

5.19. As a condition of meeting the LQG permit exemption, Subpart J at 40 C.F.R. Part 265 requires owners and operators to meet certain design and installation requirements for new tank systems or components, 40 C.F.R. § 265.192; provide secondary containment, 40 C.F.R. § 265.193; comply with general operating requirements, 40 C.F.R. § 265.194; and conduct inspections, 40 C.F.R. § 265.195.

5.20. During the Relevant Time Period, Respondent at times managed spent solvents which were F-listed and/or characteristic hazardous wastes in the 8 Tanks as described in paragraph 4.14 above.

5.21. Respondent did not meet the conditional exemption requirements of 40 C.F.R. Part 265 Subpart J at §§ 265.192, 265.193, 265.194 and 265.195, incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, for the 8 Tanks when used as described in paragraph 4.14 during the Relevant Time Period.

#### *D. Subpart CC Tank Air Emission Requirements*

5.22. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii) incorporate by reference 40 C.F.R. Part 265 Subpart CC. Subpart CC requires an owner or operator who stores hazardous waste in tanks with an average volatile organic concentration of 500 ppmw or greater at the point of waste origination to meet the Subpart CC organic air emission tank standards at 40 C.F.R. § 265.1085.

5.23. During the Relevant Time Period, Respondent at times managed spent solvents which were F-listed and/or characteristic hazardous wastes in the 8 Tanks as described in paragraph 4.14.

5.24. Each of the 8 Tanks described in paragraph 4.14 were Level 1 Tanks as specified in 40 C.F.R. § 265.1085(c).

5.25. Pursuant to 40 C.F.R. § 265.1085(c)(1) and § 265.1085(c)(4), the owner or operator shall determine the maximum organic vapor pressure for hazardous waste managed in a Level 1 Tank before the first time the hazardous waste is placed in a Level 1 Tank, and shall inspect the fixed roof and its closure devices to check for defects. 40 C.F.R. § 265.1090(b) requires the owner or operator to maintain a record of these inspections.

5.26. Respondent did not meet the conditional exemption requirements of 40 C.F.R. Part 265 Subpart CC at §§ 265.1085(c)(1), 265.1085(c)(4), and 265.1090(b) for the 8 Level 1 tanks, incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii), during the Relevant Time Period.

*E. Container dating and labeling; Tank labeling*

5.27. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(2) require that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container storing hazardous waste.

5.28. As a condition of meeting the LQG permit exemption, 40 C.F.R. § 262.34(a)(3) requires that, while being accumulated on-site, each container and tank of hazardous waste must be labeled or marked clearly with the words “Hazardous Waste.”



5.29. During the Relevant Time Period, Respondent stored hazardous waste in certain Totes and other containers described in paragraphs 4.12. and 4.13 without visibly marking for inspection the date upon which each period of accumulation began and did not label or clearly mark each container with the words “Hazardous Waste.”

5.30. During the Relevant Time Period, Respondent did not label or clearly mark each of the 8 Tanks listed and as described in paragraph 4.14 with the words “Hazardous Waste.”

5.31. Respondent did not meet the permit exemption conditions for tanks and containers pursuant to OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(2) and (3) during the Relevant Time Period.

*F. Subpart BB Applicability determinations*

5.32. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii), incorporate by reference 40 C.F.R. Part 265 Subpart BB. Subpart BB at 40 C.F.R. § 265.1064(k)(3) requires Respondent to record and maintain specific information, including an up-to-date analysis and supporting information and data used to determine whether or not the equipment in paragraph 5.35(a)-(c) below was subject to the equipment monitoring requirements of 40 C.F.R. §§ 265.1052 - 265.1060.

5.33. During the Relevant Time Period, at times each of the 8 Tanks listed as described in paragraph 4.14 and their associated tank systems, from which hazardous waste was transferred to the T400/T401 bulk hazardous waste tanks, managed spent solvents which were F-listed and/or characteristic hazardous wastes.

5.34. Pursuant to 40 C.F.R. § 265.1064(k)(3) and 40 C.F.R. § 265.1063(d), the owner and operator of a facility is required to determine, for each piece of equipment, whether the

equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10 percent by weight. This determination must be made using a methodology described in 40 C.F.R. § 265.1063(d)(1)-(2), or through the application of knowledge of the nature of the hazardous waste stream or the process by which it was produced, in accordance with 40 C.F.R. § 265.1063(d)(3).

5.35. During the Relevant Time Period, the following equipment at times contained or contacted hazardous waste with organic concentrations of at least 10 percent by weight pursuant to 40 C.F.R. § 265.1063(d):

- a. Equipment, including certain pumps and valves, associated with each of the 8 Tanks listed and as described in paragraph 4.14;
- b. Valves 4000, 4004, 4006, 4008, 4009, 4019, 4021 and 4022, associated with the bulk hazardous waste tanks T400 and T401; and
- c. Pumps and associated valves that are part of the bulk hazardous waste tank systems for tanks T400 and T401 that were used to transfer organic containing hazardous waste from Totes and/or other containers to the bulk hazardous waste tanks T400 and T401.

5.36. Respondent did not determine and/or record whether the equipment listed in paragraph 5.35(a)–(c) contained or contacted hazardous waste with organic concentration that equals or exceeds 10 percent by weight and did not meet the conditional exemption requirements of 40 C.F.R. § 265.1063(d) and/or § 265.1064(k)(3), as applicable, incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, during the Relevant Time Period.

*G. Subpart BB equipment recordkeeping*

5.37. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii) incorporate by reference 40 C.F.R. Part 265 Subpart BB. Subpart BB at 40 C.F.R. § 265.1064(b)(1) requires owners and operators to record the following information in the facility operating record for each piece of equipment to which Subpart BB of Part 265 applies: (i) Equipment identification number and hazardous waste management unit identification; (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan); (iii) Type of equipment (e.g., a pump or pipeline valve); (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment; (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid); and (vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).

5.38. Respondent did not record the information required in 40 C.F.R. § 265.1064(b)(1) in the facility operating record for each piece of equipment to which Subpart BB of Part 265 applies for each of the pieces of equipment listed above in paragraph 5.35(a)–(c) and did not meet the conditional exemption requirements of 40 C.F.R. § 265.1064(b)(1), incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, during the Relevant Time Period.

#### *H. Subpart BB equipment marking*

5.39. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii) incorporate by reference 40 C.F.R. Part 265 Subpart BB. Subpart BB at 40 C.F.R. § 265.1050 states that 40 C.F.R. Subpart BB applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight.

5.40. As a condition of meeting the LQG permit exemption, 40 C.F.R. § 265.1050(c) requires that each piece of equipment subject to Subpart BB requirements shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

5.41. The pieces of equipment listed in paragraph 5.35(a)–(c) were not included in Respondent’s list of equipment to be monitored under Subpart BB, or otherwise marked in a manner that they were distinguishable from other pieces of equipment.

5.42. Respondent did not meet the conditional exemption requirements of 40 C.F.R. § 265.1050(c), incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34 during the Relevant Time Period.

*I. Subpart BB equipment monitoring*

5.43. As a condition of meeting the LQG permit exemption, OAR 340-102-0034 and 40 C.F.R. § 262.34(a)(1)(ii) incorporate by reference 40 C.F.R. Part 265 Subpart BB. Subpart BB at 40 C.F.R. § 265.1052(a) requires an owner and operator of a facility to monitor each pump in light liquid service monthly to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b), and to visually inspect each pump in light liquid service each calendar week for indications of liquids dripping from the pump seal.

5.44. As a condition of meeting the LQG permit exemption, Subpart BB at 40 C.F.R. § 265.1057(a) requires an owner and operator of a facility to monitor each valve in gas/vapor or light liquid service monthly to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b).

5.45. During the Relevant Time Period, Respondent operated 40 C.F.R. Part 265 Subpart BB equipment, i.e., pumps and valves within the meaning of 40 C.F.R. § 264.1031, described in paragraph 5.35(a)-(c) above.

5.46. The pumps and valves in light liquid service described in paragraph 5.35(a)-(c) contained or contacted hazardous waste with organic concentrations of at least 10 percent by weight during the Relevant Time Period.

5.47. Pursuant to 40 C.F.R. § 265.1052(a)(1) and (2) and 40 C.F.R. § 265.1064(l) each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b); each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal; and records of the equipment leak information required by 40 C.F.R. § 265.1064(d) need to be maintained for 3 years.

5.48. Pursuant to 40 C.F.R. § 265.1057(a) and 40 C.F.R. § 265.1064(l), each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by methods specified in 40 C.F.R. § 265.1063(b); and records of the equipment leak information required by 40 C.F.R. § 265.1064(d) need to be maintained for 3 years.

5.49. During the Relevant Time Period, Respondent did not monitor or keep records of leaks from the pumps and valves identified in paragraph 5.35(a)-(c).

5.50. Further, Respondent did not perform the required monitoring for organic emissions leaks for these pumps and valves referenced in paragraph 5.35(a)-(c) pursuant to 40 C.F.R. §§ 265.1052(a) and 265.1057(a), respectively, at the Facility during the Relevant Time Period. Accordingly, Respondent did not meet the conditional exemption requirements of

40 C.F.R. §265.1052(a), § 265.1057(a) and § 265.1064(d) and (l), incorporated by reference at OAR 340-102-0034 and 40 C.F.R. § 262.34, during the Relevant Time Period.

### *Summary*

5.51. As described in paragraphs 5.1 through 5.50, Respondent did not meet the above LQG conditional exemptions in Section V.A through I required at OAR 340-102-0034 and 40 C.F.R. § 262.34 for an LQG to operate without a permit or interim status.

5.52. Respondent owned and/or operated the Facility without a permit or interim status during the Relevant Time Period in violation of Section 3005(a) RCRA, 42 U.S.C. § 6925(a), and OAR 340-105-0001.

5.53. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may assess a civil penalty of not more than \$25,000 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA. This figure has been adjusted for inflation from \$25,000 to \$121,275 where penalties have been assessed on or after December 27, 2023.<sup>2</sup>

## **VI. TERMS OF SETTLEMENT**

For the purposes of this agreement:

6.1. Respondent admits the jurisdictional allegations for purposes of this Consent Agreement.

6.2. Respondent neither admits nor denies specific factual or legal allegations contained in this Consent Agreement.

6.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering

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<sup>2</sup> The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19.

these factors, EPA has determined that an appropriate penalty to settle this action is \$500,000.00 (the “Assessed Penalty”).

6.4. Respondent consents to the assessment of the civil penalty and agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

6.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at [www.epa.gov/financial/makepayment](http://www.epa.gov/financial/makepayment). Payment made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America,” Respondent must note on the check the title and docket number of this action, and it must be delivered to the following address:

*Address format for standard delivery  
(no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

*Address format for signed receipt  
confirmation (FedEx, DHL, UPS, USPS  
certified, registered, etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

6.6. Concurrently with payment, Respondent must serve photocopies of the check or proof of other payment method described in paragraph 6.5 on the Regional Hearing Clerk and EPA Region 10 by electronic mail at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10

Matthew Quarterman  
U.S. Environmental Protection Agency  
Region 10

6.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

6.8. If Respondent fails to pay any portion of the Assessed Penalty under this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

- a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.
- b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.
- c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6 percent per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.



6.9. The Assessed Penalty, including any additional costs incurred under paragraph 6.8 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

6.10. The undersigned representatives of Respondent certify that the representatives are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

6.11. Except as described in paragraph 6.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

6.12. Solely for the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

6.13. Solely for the purposes of this proceeding, 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 Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6.14. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

6.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, employees, successors, and assigns.

DATED

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FOR RESPONDENT



Anthony McBride, VP  
EHSSQ & Product Stewardship  
W. R. Grace & Co.-Conn.

DATE

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FOR COMPLAINANT

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Edward J. Kowalski, Director  
Enforcement & Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	Docket No. RCRA-10-2024-0073
	)	
W. R. Grace & Co.-Conn.	)	<b>FINAL ORDER</b>
	)	
	)	
	)	
Respondent.	)	
	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims against Respondent for civil penalties under RCRA solely for the violations alleged in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED

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Regional Judicial Officer  
EPA Region 10

**Certificate of Service**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: W. R. Grace & Co.-Conn, Docket No.: RCRA-10-2024-0073**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Negin Mostaghim, Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 2249A  
Washington, DC 20460-0001  
[Mostaghim.Negin@epa.gov](mailto:Mostaghim.Negin@epa.gov)

Apple Chapman  
Assistant General Counsel, Regulatory and EH&S  
W. R. Grace & Co.-Conn.  
7500 Grace Drive  
Columbia, MD, 21044  
[Apple.Chapman@grace.com](mailto:Apple.Chapman@grace.com)

Augustus E. Winkes  
Beveridge & Diamond, P.C.  
600 University Street, Suite 1601  
Seattle, WA 98101  
[AWinkes@bdlaw.com](mailto:AWinkes@bdlaw.com)

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Regional Hearing Clerk  
EPA Region 10