EPA
Region 1, New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100, BOSTON, MA 02109-3912

March 19, 2015

VIA HAND-DELIVERY

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
Mailcode ORA18-1
5 Post Office Square, Suite 100, Boston, MA 02109-3912

Re: *In the Matter of Mann Distribution LLC and 3134 Post LLC*, Docket Nos. CAA-01-2015-0029 and RCRA-1-2015-0028

Dear Ms. Santiago:

Enclosed for filing please find an Administrative Order on Consent for the above-captioned matter.

Sincerely,

Catherine Smith
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I

Enclosure

cc: Harlan Doliner, Esq.

In Re: *Mann Distribution LLC and 3134 Post LLC*, EPA Docket Nos. CAA-01-2015-0029 and RCRA-1-2015-0028

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Order on Consent has been sent to the following persons on the date noted below:

Original and one copy, hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

Three copies of Consent Agreement via certified mail, return receipt requested

Harlan Doliner, Esq.
Verrill Dana, LLP
One Boston Pl., Ste. 1600
Boston, MA 02108

Dated: 3/19/15

Catherine S. Smith
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel: (617) 918-1777
FAX: (617) 918-0777
Email: smith.catherine@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

MEMORANDUM

DATE: March 13, 2015

FROM: Catherine Smith, Senior Enforcement Counsel, Regulatory Legal Unit CSS

TO: LeAnn Jensen, Acting Regional Judicial Officer

RE: Proposed Administrative Compliance Order on Consent for *In the Matter of Mann Distribution LLC and 3134 Post Road LLC,* Docket Nos. CAA-01-2015-0029 and RCRA-01-2015-0028

Enclosed is a proposed Administrative Compliance Order on Consent ("AOC") for alleged RCRA and Clean Air Act Section 112(r) violations. Both parties have signed it, and I am now submitting it for your approval and signature of the Final Order in accordance with 40 C.F.R. § 22.18(b).

The facts underpinning the AOC arise out of an inspection that occurred in 2013. The RCRA provisions of the AOC allege several violations of RCRA's requirements for hazardous waste generators and require Respondents to submit two written confirmations of compliance with RCRA, one close to the time of order issuance and one a year later. The Clean Air Act ("CAA") provisions of the AOC allege violations of CAA Section 112(r)(1)'s General Duty Clause and require various compliance activities such as properly storing chemical inventory at the facility and undertaking a third-party inspection program to improve and periodically confirm compliance. This AOC does not require payment of penalties.

While RCRA administrative compliance orders are subject to 40 C.F.R. Part 22 and your ratification, CAA compliance orders are merely signed by the Office Director for the Office of Environmental Stewardship. Despite the differing 40 C.F.R. Part 22 statuses of CAA and RCRA compliance orders, EPA wishes to issue a joint CAA/RCRA AOC because (a) the underlying facts arise from the same inspection; (b) Respondents agree not to appeal or request a hearing on the order, obviating the need to separate out the orders for hearing or appeal reasons; and (c) it is administratively more efficient to write one, rather than two, orders.

The proposed Final Order language clarifies that although the CAA requirements may take effect upon signature of the AOC by the Director of the Office of Environmental

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF	Docket Nos: RCRA-01-2015-0028 CAA-01-2015-0029
Mann Distribution LLC and 3134 Post LLC	
3134 Post Road Warwick, Rhode Island 02886	**FINDING OF VIOLATION AND ADMINISTRATIVE ORDER ON CONSENT**
Respondents	
Proceeding under Section 113 of the Clean Air Act and Section 3008(a) of the Resource Conservation and Recovery Act	

Table of Contents

I. INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 ("EPA" or "EPA Region 1") makes the following Findings of Violation and issues an ORDER ON CONSENT for Respondents' failure to comply with Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), and RCRA Section 3002, 42 U.S.C. § 6922, with regard to the handling of hazardous wastes and extremely hazardous substances at its 3134 Post Road, Warwick, Rhode Island Facility. The parties to the ORDER ON CONSENT are EPA Region 1 and Respondents, Mann Distribution LLC and 3134 Post LLC. EPA makes the findings and issues this ORDER ON CONSENT pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3); Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, "RCRA"), 42 U.S.C. § 6928(a); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Part 22").

2. This Order on Consent ("Order") is entered into upon mutual agreement by the parties. Accordingly, although Respondents neither admit nor deny EPA's findings herein, Respondents consent to and agree not to contest EPA's jurisdiction to issue this Order or enforce its terms. Further, Respondents shall not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondents' full compliance with the terms of this Order; or impose sanctions for violations of this Order.

3. This Order shall apply to and be binding upon Respondents, their agents, successors and assigns and upon all persons, contractors, and consultants acting under or for Respondents. No change in ownership or corporate or partnership status of the Respondents will in any way alter the status of Respondents or their responsibilities under this Order.

II. STATUTORY AND REGULATORY AUTHORITY

Clean Air Act

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as section 654 of Title 29, to (a) identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques; (b) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause."

5. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

6. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the Clean Air Act. Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.[1] The term includes, but is not limited to, regulated substances listed in Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.[2]

7. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

8. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to issue compliance orders for violations of the Act, including violations of Section 112(r), 42 U.S.C. §7412(r). Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA must send a copy of the order to the relevant State air pollution control agency, and an order relating to a violation of Section 112 of the CAA can take effect immediately upon issuance.

9. The authority to issue orders pursuant to Section 113(a)(3) of the CAA has been delegated to EPA Region I's Regional Administrator, and in turn to the Director of EPA Region I's Office of Environmental Stewardship.

RCRA

10. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921 et seq., empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270.

---

[1] Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).
[2] Id.

11. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are regulated as "hazardous wastes." These regulations are set forth at 40 C.F.R. Part 261.

12. Section 3002 of RCRA, 42 U.S.C. § 6922, required EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and relate to such matters as determining whether a waste is hazardous, container management, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.

13. In 1984, Congress substantially amended RCRA with the Hazardous and Solid Waste Amendments ("HSWA") to, among other things: (a) restrict the disposal of hazardous wastes on the land or in landfills; and (b) change the method for determining whether wastes are toxic (and therefore hazardous). RCRA Section 3004(c)-(p), 42 U.S.C. § 6924(c)-(p).

14. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

15. On January 30, 1986, EPA granted the State of Rhode Island and Providence Plantations ("Rhode Island") final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program. See 51 Fed. Reg. 3780 (January 30, 1986). Updates to the Rhode Island hazardous waste management program were authorized by EPA on March 12, 1990, effective March 26, 1990; March 6, 1992, effective May 5, 1992; October 2, 1992, effective December 1, 1992; August 9, 2002, effective October 8, 2002; December 11, 2007, effective February 11, 2008; and July 26, 2010 and September 20, 2010, effective September 24, 2010. The authority for the Rhode Island hazardous waste program is set out at Chapter 23-19.1 of the Rhode Island General Laws. The authorized Rhode Island RCRA regulations are entitled *State of Rhode Island and Providence Plantation Rules and Regulations for Hazardous Waste Management* (Regulation #DEM OWM HW 10-01, Rules 1.00 through 17.00), hereinafter the "2010 RI Rules." New RI Rules came into effect on February 10, 2014 (the 2014 RI Rules), but those Rules were not in effect on the date of the violations alleged herein and are not yet federally-authorized. Accordingly, the RI Rules cited herein are the 2010 RI Rules. Also, because EPA has not yet authorized the State of Rhode Island to implement some HSWA portions of the federal RCRA program, there is a dual State/Federal RCRA program in Rhode Island. State law governs the base hazardous waste program, but EPA has exclusive jurisdiction to implement and enforce the HSWA provisions for which Rhode Island is not authorized.

16. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

17. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. § 6928(a) and 6926(g), EPA may enforce the federally-approved Rhode Island hazardous waste program, as well as the federal regulations promulgated pursuant to HSWA, by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of this action has been given to Rhode Island.

18. Unlike CAA orders, RCRA compliance orders are subject to the requirements of Part 22, which includes the right to an administrative hearing. Pursuant to 40 C.F.R. § 22.37(b), compliance orders become final unless, no later than 30 days after the order is served, the respondent requests a hearing. (As specified in paragraphs 124 and 125 below, Respondents agree to waive this right to a hearing.)

19. The authority to issue orders pursuant to Section 3008(a) of RCRA has been delegated to EPA Region I's Regional Administrator, and in turn to the Director of EPA Region I's Office of Environmental Stewardship ("OES"), who, in turn re-delegated her authority to OES's Legal Enforcement Manager. By memorandum dated September 8, 2011, the Director of OES clarified that she retains concurrent authority to issue such orders.

III. GENERAL ALLEGATIONS

20. Mann Distribution LLC ("Mann") is the operator of a facility that distributes, packages, and warehouses chemicals (the "Facility"), located at 3134 Post Road, Warwick, Rhode Island 02886.

21. Mann is a limited liability corporation organized under the laws of the Rhode Island that was formerly known as Mann Chemical LLC.

22. 3134 Post LLC owns the real estate at 3134 Post Road and is a limited liability corporation organized under the laws of the Rhode Island.

23. As limited liability corporations, Mann and 3134 Post LLC are each a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e) to whom a compliance order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3). Likewise, each Respondent is a "person" pursuant to Section 1004(5) of RCRA, 42 U.S.C. § 6903(15), and 2010 RI Rule 3.0, to whom a compliance order may be issued under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

24. On August 26, 2009, EPA issued a Notice of Violation, Administrative Order, and Reporting Requirement to Mann Chemical LLC for violations of CAA Section 112(r) found during a July 25, 2009, inspection of the Facility ("the 2009 Order"). Likewise, on September 30, 2011, EPA issued a Notice of Violation and Administrative Order to Respondents for CAA Section 112(r) violations found during a

February 10, 2011 inspection ("the 2011 Order"). In response to these enforcement actions, Respondent, Mann, undertook many actions to further its compliance with CAA Section 112(r), including but not limited to conducting a facility-wide hazard analysis; fixing secondary containment for tanks; limiting storage of certain chemicals so as not to trigger the risk management planning requirements of 40 C.F.R. Part 68; designing and implementing a plan to separate incompatible chemicals; and installing a fire alarm system. Mann purchased and installed a sprinkler system, but it is not yet operational, as the City water main needed to be extended. Also, County water officials and the Warwick Fire Department still need to approve the hook-up. In addition, Mann made several staffing changes, including hiring an Environmental Health and Safety Coordinator to manage environmental compliance.

25. In November of 2012, Respondent, Mann, through its contractor, provided hazardous waste training required for generators of hazardous waste to one of its employees.

26. On April 4, 2013, authorized representatives of EPA Region 1 (the "Inspectors") conducted an inspection of the Facility (the "2013 Inspection") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927; Section 114 of the CAA, 42 U.S.C. § 7414; and EPCRA, 42 U.S.C. § 11001 et seq. Officials from the Warwick Fire Department accompanied the Inspectors.

27. As more fully described in CAA Counts I and II below, during the 2013 Inspection, the Inspectors observed several examples of deficient chemical management practices relating to **extremely hazardous substances, mainly inventory,** stored at the Facility, including the following:

a. Storage of chemicals that, alone or in combination, are extremely hazardous substances without an operational fire suppression system;
b. Failure to timely inspect fire alarm system;
c. Failure to separate incompatible chemicals;
d. Failure to properly assess the compatibility of stored chemicals that are generally in the same hazard class but that nonetheless should not be co-located;
e. Containers of flammable chemicals stored outdoors within 10 feet of the warehouse building;
f. Inadequate spacing between aisles; and
g. Failure to store containers so that contents could be identified by reading the container's label.

28. At the time of the 2013 Inspection, Respondents also had generated and were accumulating "hazardous wastes" at the Facility, as such term is defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903, and 2010 R.I. Rule 3.0. As more fully described in Counts III through X below, the Inspectors observed several examples of deficient management of **hazardous wastes** at the Facility, including, among others, the following:

a. Failure to properly notify the Rhode Island Department of Environmental Management ("RIDEM") about hazardous waste activity;
b. Failure to properly conduct hazardous waste determinations at the time of generation;
c. Failure to separate incompatible wastes;
d. Failure to maintain an adequate hazardous waste training plan;
e. Failure to label containers of hazardous waste with the words "hazardous waste," a description of the contents, and the date of accumulation;
f. Failure to maintain adequate aisle space;
g. Failure to maintain adequate emergency response equipment at each hazardous waste storage area;
h. Failure to minimize the potential for a release; and
i. Storage of hazardous waste containers in arrangements that obstruct labels from being able to be viewed.

29. On May 28, 2013, EPA issued a Notice of Potential Violation to Respondent, Mann. This Notice warned Mann about the dangerous conditions listed in paragraphs 27 and 28 above.

30. Subsequent to the 2013 Inspection, on October 2, 2013, the Rhode Island Department of Environmental Management ("RIDEM") investigated a complaint alleging that a reaction had occurred at the Facility on September 12, 2013, when sodium chloride, chlorine, and phosphoric acid were improperly mixed in a container, creating a chemical reaction ("the September 2013 Incident"). RIDEM learned that incompatible off-specification commercial products had been combined within the container, resulting in a chemical reaction and smoke.

31. Later, on January 7, 2014, a forklift accidently punctured a container of sulfuric acid stored outside the Facility's warehouse, causing 200 gallons of sulfuric acid to spill (the "2014 Sulfuric Acid Spill"). According to a Mann report, five gallons or less of sulfuric acid reached the Apponguag Cove. Respondent, Mann, notified RIDEM approximately one hour after the spill, but did not notify the local fire department or the National Response Center until the next day.

IV. FINDINGS OF VIOLATION

Clean Air Act

Count 1: Failure to Design and Maintain a Safe Facility, In Violation of the Clean Air Act's General Duty Clause

32. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same

extent as section 654 of Title 29, to (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. CAA Section 112(r)(1) is known as "the General Duty Clause."

33. The General Duty Clause is a performance standard with requirements that often can be achieved in a variety of ways. EPA routinely consults codes, standards, and guidance ("industry standards") issued by trade and fire prevention associations to understand the hazards posed by the use of various extremely hazardous substances. The industry standards are also evidence of the standard of care that industry, itself, has found to be appropriate for managing those hazards. These industry standards are consistently relied upon by industry and fire prevention experts and are sometimes incorporated into state building, fire, and mechanical codes. For chemical warehouse and distribution facilities, EPA often consults National Fire Prevention Association standards (such as NFPA 30 and 400, NFPA's flammable liquids and hazardous materials codes), state fire codes, and the Center for Chemical Process Safety's *Guidelines for Safe Warehousing of Chemicals.*

34. At the times relevant to the violations alleged herein, Respondents processed, handled, and/or stored the following chemicals at the Facility, among many others: hydrofluoric acid (concentration 49%), ammonium hydroxide (with at least 30% ammonia content), ethylenediamine, formaldehyde, nitric acid (concentration of 68%), phenol, sulfuric acid, hydrochloric acid, methyl ethyl ketone, methanol, isopropyl alcohol, acetone, xylene, dimethylformamide, potassium permanganate, sodium chlorite, sodium persulfate, triethanolomine 85%, acetic acid, phosphoric acid, dodecyclbenzene sulfonic acid, formic acid, amyl acetate, glycol ether EB, sodium hydrosulfite, and thiourea dioxide.

35. The chemicals listed in paragraph 34 above, either alone or improperly co-located with at least one of the other chemicals listed in that paragraph, are chemicals that may, as the result of short-term exposures associated with releases to the air, cause death, injury or property damage due to their toxicity, reactivity, flammability, volatility, or corrosivity. Accordingly, they are "extremely hazardous substances," within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

36. The unanticipated emission of any of the chemicals listed in paragraph 34, either alone or in combination, into the ambient air from the facility would constitute an "accidental release," as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

37. The facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as that term is defined Section 112(r)(2)(C) of the CAA, 42 U.S.C. §7412(r)(2)(C).

38. Mann is the "operator" and 3134 Post LLC is the "owner," as those terms are defined by Section 112(a)(9) of the CAA, 42 U.S.C. §7412(a)(9), of a stationary source.

39. As mentioned in paragraph 27 above, On April 4, 2013, the Inspectors observed some deficient practices relating to the storage of extremely hazardous substances at the Facility, including the following:

a. ***Storage of chemicals without an operational fire suppression system.*** The Inspectors observed that Respondents had not yet installed an operational fire suppression system, despite being required to do so by the Warwick Fire Marshal in 2009 and by EPA on September 30, 2011. It is standard industry practice to have a fire suppression system in chemical warehouses that store hazardous materials.[3] Respondents stored certain oxidizers, pyrophoric solids, flammable liquids and combustible liquids in the warehouse in amounts that exceeded fire code limits for buildings that do not have fire suppression systems. Some of these chemicals even exceeded the amounts that can be safely stored even *with* fire suppression, and at least one chemical (sodium hydrosulfite) should be stored in a separate detached building. For example, every day during 2012, Respondents stored potassium permanganate, a class 2 oxidizer, in Warehouse A in average amounts of 11,000 pounds and a maximum amount of 22,000, which exceeded maximum allowable amounts. Oxidizers give up oxygen under certain conditions, which can feed and intensify fires, and some oxidizers can cause combustible materials to ignite without an obvious ignition source or cause materials that do not readily burn in air to burn.

b. **Failure to timely inspect fire alarm system**. From looking at inspection certificate stickers on the fire alarm control panel, the Inspectors observed that, according to the schedule on the sticker, the fire alarm system was almost four months overdue for inspection. Fire alarm systems allow for early warning and evacuation of warehouse employees, as well as timely alerting emergency responders to dangers. It is standard industry practice to maintain alarm systems in operable condition.[4]

c. **Failure to separate incompatible chemicals.** The Inspectors observed storage of incompatible chemicals in close proximity to one another. The co-location of these chemicals creates risk of fire, explosion, liberation of toxic gases and corrosive fumes, and other reactions if the chemicals are spilled or

---

[3] See e.g., Center for Chemical Process Safety, *Guidelines for Safe Warehousing of Chemicals*, Chapter 7 (1998); and National Fire Prevention Association ("NFPA") 1, *Fire Code*, Section 66.6.7 (2012 edition) (incorporated by reference into the Rhode Island Fire Safety Code, Section 7); NFPA 400, *Hazardous Materials Code*, Section 6.2.1.1 (2010 edition), referenced throughout NFPA 1; and International Fire Code Section 2704.5 (2006 edition).

[4] See e.g., *Guidelines for Safe Warehousing of Chemicals*, Chapter 8; NFPA 72, Chapter 10 (2002 ed.); NFPA 1 Section 60.5.1.16 (2012 ed.).

released. It is standard industry practice to separate incompatible chemicals.[5] In response to previous EPA Orders, Respondents had developed an Incompatible Material Segregation Plan to control these risks, which plan was partially but not fully implemented at the time of the 2013 Inspection. Some examples of co-location of incompatible chemicals found during the 2013 Inspection, among others, include the following:[6]

i. In the hot acid room, phenol was stored adjacent to phosphoric acid and triethanolamine. The interaction of these substances can cause an exothermic reaction that can generate heat and cause overpressurization. Triethanolamine was also stored adjacent to acetic acid in this room, and the interaction of these substances can cause an intense exothermic reaction that can generate toxic and corrosive fumes.

ii. In a separately bermed area of Warehouse A marked "Combustible Solid Storage" were six 55 gallon drums of benzyl alcohol stored a few feet from nine fiber containers of thiourea dioxide. These two chemicals, if combined, can have a particularly violent or explosive exothermic reaction that releases heat and produces dangerous gases.

iii. In Warehouse B, the Facility's Hazardous Materials Segregation Plan indicated that physical barriers existed in this room to separate acids from alkali materials, as well as to separate acidic oxidizers from other acids. However, no such physical barriers existed except a berm around the hydrofluoric acid, and aisle space in this room was minimal.

iv. In one area outside the warehouse, the Inspectors observed intermingled drums and totes of flammable material, including methyl ethyl ketone, methanol, isopropyl alcohol, acetone, and xylene. Sometimes chemicals in the same hazard class should not be mixed. For example, acetone and methanol are both flammable and in the same hazard class, but they can form explosive or shock sensitive reaction products if mixed.

v. Also outside, a row of hydrochloric acid was stored only 22 inches from a row of 32% aqueous ammonia 26 Baume, which in turn was only 22 inches from a row of UN1993 glycol ether. If mixed, hydrochloric acid and the 32% aqueous ammonia can have an intense or explosive exothermic reaction, releasing heat and producing acid fumes. Likewise the hydrochloric acid and glycol ether (which were not immediately adjacent but within a few feet of each other) are incompatible; they can have an exothermic reaction that generates gas and heat, and the reaction products may be flammable or explosive.

---

[5] See e.g., *Guidelines for Safe Warehousing of Chemicals*, Chapter 2.6.; Material Safety Data Sheets; and NFPA 1, Section 66.9.17 (2012 ed.).

[6] The reactivity of chemicals was predicted through the use of CAMEO Chemicals and, in some cases, the *Chemical Reactivity Worksheet*. These are on-line tools designed for people who are involved in hazardous material incident response and planning, developed by the National Ocean and Atmospheric Administration's Office of Response and Restoration in partnership with the EPA and the U.S. Coast Guard.

vi. In a waste staging area outside, the Inspectors found saw a pile of various containers and totes stored on wood pallets, including methanol stored next to caustic soda solution (an incompatible duo, which can have an exothermic reaction that releases heat and generates hydrogen gas); isopropyl alcohol near acetone (which can create explosive or shock-sensitive reaction products); and sodium chlorite next to acetone (which can have a particularly violent exothermic reaction that can create toxic and flammable reaction products).

vii. Generally, many of the physical barriers depicted in the Facility's Incompatible Materials Separation Plan to separate incompatibles were either not present or did not provide complete and continuous separation between incompatible materials.

d. **Containers of flammable chemicals stored outdoors within 10 feet of the warehouse building**; The Inspectors noted that, outside, flammable chemicals were stored immediately up against the building despite fire code restrictions against doing so.[7]

e. **Inadequate spacing between aisles.** During the 2013 Inspection, the Inspectors observed insufficient aisle spacing between piles of hazardous materials throughout and outside the warehouse. For example, in addition to the examples mentioned above in the discussion of incompatible chemicals, in the Hot Room 2 Acid Room, the Inspectors found that the floor space was completely full of a myriad of containers (including phenol, gluconic acid, triethanolamine 85%, phosphoric acid, and acetic acid) without any aisle space whatsoever. In the event of a spill, fire, or other incident, Respondent's failure to maintain adequate aisle space to allow the unobstructed movement of forklifts, personnel, emergency responders or emergency equipment could increase the potential for an accidental release or exacerbate the consequences of a fire or accidental release. It is standard industry practice to maintain aisle space.[8]

f. **Failure to store containers so that contents could be identified by reading the container's label.** The Inspectors also found numerous places where containers could not be identified because the labels were not visible. This makes it very difficult to properly handle the chemicals so as to prevent a release (for example, by ensuring that incompatibles are not co-located), and to conduct safe emergency response in the event of a release. Examples included the Hot Room 2 Acid room (containing phenol, among other chemicals) where the Inspectors could not identify many containers because labels were not visible, the Hot Room I Alkali Room (also containing phenol and other chemicals), and the outdoor waste storage area (discussed above). It

---

[7] See, e.g., NFPA 1, 66.15.4.3 (2012 ed.) referencing 66.15.4.1 (which specifies that a 10 foot clearance space along the common wall is needed if storing more than 1100 gallons of flammable liquids next to an adjacent building wall).

[8] See, e.g., NFPA 400, Section 13.4.3.2 (2010 ed.) (aisle spacing for flammable solids), Section 18.4.3.2.2 (aisle spacing for toxic solids and liquids), Section 19.4.3.2 (aisle spacing for unstable solids and liquids), and Section 6.1.12.2 (aisle spacing for storage of incompatible materials).

is standard industry practice for containers to be conspicuously labeled and have the labels facing the aisles so that they can be read.[9]

40. In addition to the Inspector's observations, the September 2013 Incident, discussed in paragraph 30, above, provides another example of Respondents' failure to properly manage incompatible chemicals so as to prevent fire hazards and the release of dangerous gases.

41. The 2014 Sulfuric Acid Spill discussed in paragraph 31 above, could have been prevented had Respondent provided secondary containment for its outside storage of extremely hazardous substances. It is standard industry practice to prevent spills of certain extremely hazardous substances, such as sulfuric acid, by providing secondary containment.[10]

42. The failures to install a fire suppression system, timely inspect the fire alarm, separate and appropriately manage incompatible chemicals, store large quantities of flammable liquids far enough from the warehouse, maintain adequate aisle space, store containers such that their contents could be read, and provide adequate secondary containment for certain chemicals stored outdoors constitute a failure to design and maintain a safe facility, in violation of the General Duty Clause.

Count II: Failure to Minimize Consequence of Releases that Do Occur In Violation of the Clean Air Act's General Duty Clause

43. The allegations in paragraphs 1 through 42 are hereby realleged and incorporated herein by reference.

44. As alleged in paragraphs 4 and 32 above, in addition to designing and maintaining a safe facility, the GDC requires Respondents to minimize the consequences of releases that do occur.

45. On January 7, 2014, the day of the 2014 Sulfuric Acid Spill, Respondents' employees did not immediately contact the fire department when they knew that a sulfuric acid spill had occurred, as required by federal and state law. See EPCRA Section

---

[9] See, e.g., NFPA 1 Section 60.5.1.8.2 (2012 ed.); *Guidelines for Safe Warehousing of Chemicals*, Chapter 4.4.1.

[10] See e.g., International Fire Code (2006 edition), Section 2704.2.2; NFPA 1, Fire Code, Section 60.5.1.3.1 (2012 edition incorporated by reference into the Rhode Island Fire Safety Code, Section 7); NFPA 1 section 60.5.1.1, which states that "storage of hazardous materials in quantities exceeding the maximum allowable quantity permitted in control areas set forth in Section 60.4 [of NFPA 1] shall comply with Section 6.2 of NFPA 400 and the applicable material-specific requirements in Chapters 11 through 21 of NFPA 400," which in turn requires that corrosive liquids and toxic liquids, among other types of hazardous materials, be provided with secondary containment when stored outdoors in amounts exceeding the maximum allowable quantity (see Table 6.2.7.3.2 of NFPA 400 for secondary containment requirements and Table 5.4.1.2 for maximum allowable quantities); and NFPA's requirements for flammable liquids at NFPA 1, Section 66.15.3.5 (outdoor storage of flammable liquids shall be graded in a manner to divert possible spills away from buildings or shall be surrounded by a curb of at least 6 inches).

304, 42 U.S.C. § 11004, and NFPA 1, Section 60.5.1.3.4, which is incorporated by reference into the R.I. Fire Safety Code, Section 7. Nor did any employee call the National Response Center ("NRC") as required by federal law until the next day. See CERCLA Section 103(a), 42 U.S.C. §9603(a). RIDEM was contacted approximately an hour after the spill. Respondents finally notified the fire department and the NRC the next day.

46. Sulfuric acid is extremely hazardous and requires specialized emergency response when spilled. By failing to alert emergency responders of the 2014 Sulfuric Acid Spill in a timely manner and by failing to provide secondary containment for the chemical, Respondents potentially jeopardized the health and safety of employees.

47. In addition, as alleged above in paragraph 39(a), Respondents currently do not have a fire suppression system in place to minimize fires and releases that might occur in the warehouses.

48. By failing to timely alert emergency responders of the 2014 Sulfuric Acid Spill; provide secondary containment for certain chemicals such as sulfuric acid that are stored outside; and install a fire suppression system, Respondents have failed to minimize the consequences of releases, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

RCRA

Count III: Failure to Notify RIDEM About Hazardous Waste Activity in Violation of RCRA

49. The allegations in paragraphs 1 through 48 are hereby realleged and incorporated herein by reference.

50. During the 2013 Inspection, the Inspectors saw an area within Warehouse A of the Facility where there were two pallets of waste chemicals that, according to Facility representatives, were awaiting being lab packed for shipment offsite. Respondent's contractor stated that the chemicals were generated from cleaning out a laboratory that was no longer in use.

51. On the loading dock for Warehouse A, the Inspectors observed four 55-gallon drums that were marked as off-spec 20% methanol. Near the loading dock was an area with ten 55-gallon drums and eleven 275-gallon totes, which the plant manager identified as a waste area. He stated that he had consolidated all the waste-containing drums and totes in this area beginning less than a month prior to the inspection. A consultant for Respondents (Mr. Fradette of GZA GeoEnvironmental, Inc.) later stated that this pile of waste was a collection of the waste containers that he had encountered around the Facility since he had been working for the Facility. The containers were stored up to two-tiers high with no aisle space. The labels attached to the containers were

not all visible for inspection. However, the Inspectors were able to read some labels to ascertain that the pile of drums and totes contained at least the following hazardous wastes, among others:

a. One drum with a "Material for Recycle" label and a "99% isopropyl alcohol" label and another drum labeled with an isopropyl alcohol product label. The second drum also had a "To be Dispositioned or Recycled" sticker attached. The isopropyl alcohol likely would be a flammable waste carrying the hazardous waste code "D001";
b. One drum labeled with a methanol product label. Methanol likewise would be a flammable waste carrying the hazardous waste code "D001";
c. Two drums labeled with acetone product labels. The product label attached to one of these drums was also marked "+ xylene" after the word "acetone." The drums also had a "Hold for Inspection" sticker attached. The acetone and xylene wastes likely would be flammable wastes carrying the hazardous waste code "D001";
d. One tote with a caustic soda solution UN-1824 product label as well as a "To Be Dispositioned or Recycled" sticker attached. The caustic soda solution would likely be a corrosive waste carrying the hazardous waste code "D002";
e. Two totes with sodium chlorite solution UN-1908 product labels. One of the totes was also labeled "Hold for Inspection." The sodium chlorite solution was likely a corrosive waste carrying the hazardous waste code "D002." This chemical is an oxidizer and therefore should also carry the waste code for flammable wastes (D001);
f. Three totes with phosphoric acid UN-1805 product labels. Two of the totes were also labeled "Hold for Inspection." The phosphoric acid waste was likely a corrosive waste carrying the hazardous waste code "D002."

52. During the 2013 Inspection, the Inspectors and the Facility's Owner and Operations Manager discussed whether some of the wastes referenced in paragraph 51 above might be reused or recycled. When the Inspectors asked him to specify which wastes could be reused and how, he was not able to provide such information and stated "we will ship it all off."

53. Subsequently, on April 29, 2013, Respondent, Mann, shipped off 36,180 pounds of hazardous waste including:

a. 26,240 pounds of corrosive liquid waste (D002), including sodium chlorite, sodium hydroxide, hydrochloric acid, sulfuric acid, and phosphoric acid (see Hazardous Waste Manifest 000808766VES);
b. 4,800 pounds of flammable liquids (D001), including a xylene and alcohol mix, isopropanol, and methanol (see Hazardous Waste Manifest 00808767VES);
c. 400 pounds of waste n-propyl bromide petroleum distillates (naptha) carrying the hazardous waste codes U159, D035, and D001 (see Hazardous Waste Manifest 000808794VES);
d. 4,400 pounds of waste sodium hydroxide (D002) (see Hazardous Waste Manifest 000808768VES); and

e. All on Hazardous Waste Manifest 000808795VES:
   i. 145 pounds of waste flammable liquids (D001), with 40 pounds also having the codes D002 and U239;
   ii. 30 pounds of toxic, carbamate pesticides with the waste code U114;
   iii. 10 pounds of waste toxic liquids 1,1,1, trichloroethane and methylene choride with the waste codes U088 and U226;
   iv. 150 pounds of waste corrosive liquids (D002); and
   v. 5 pounds waste formic acid with more than 85% acid by mass having the waste codes U123, D002, and D001.

54. Pursuant to 2010 RI Rule 5.1, a generator of hazardous waste must apply for and obtain an EPA I.D. number.

55. At all times relevant to this Order, Respondents' Facility was a "facility," as defined at 40 C.F.R. § 260.10 and 2010 RI Rule 3.0.

56. At all times relevant to this Order, Respondent Mann Distribution LLC was the "operator" of the Facility, and Respondent 3134 Post LLC was the "owner" of the Facility as defined at 40 C.F.R. § 260.10 and 2010 RI Rule 3.0. Both Respondents were also "generators" as defined at 40 C.F.R. § 260.10 and 2010 RI Rule 3.0.

57. At all times relevant to this Order, Respondents generated "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and 40 C.F.R. §§ 260.0 and 261.2. See also 2010 R.I. Rule 3.0 ("Waste shall mean solid waste as defined in 40 C.F.R. 261.2").

58. At all times relevant to this Order, some of the wastes Respondent generated were "hazardous wastes" as defined in Section 1104(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3, and 2010 RI Rule 3.0.

59. Respondents failed to obtain an EPA ID number for the hazardous wastes generated at the Facility until after the 2013 Inspection. Accordingly, Respondents violated 2010 RI Rule 5.1. See also 40 C.F.R. § 262.12.

Count IV: Failure to Make an Adequate Hazardous Waste Determinations in Violation of RCRA

60. The allegations in paragraphs 1 through 59 are hereby realleged and incorporated herein by reference.

61. Pursuant to 2010 RI Rule 5.8, a generator must determine if any of its wastes meet any of the definitions of a hazardous waste, as required by 40 C.F.R. § 262.11. See also 40 C.F.R. §§ 268.7(a) and 268.9(a).

62. At the time of the 2013 Inspection, Respondent was not conducting hazardous waste determinations for at least the following waste streams and/or containers of waste:

a. Waste chemicals in Warehouse A awaiting lab packing: As alleged in paragraph 50 above, the Inspectors saw two pallets of chemicals in Warehouse A that were awaiting being lab packed for shipment off-site. They included, among other things, approximately 14 five-gallon containers of material, one of which was marked sulfuric acid, three jugs of material for which the identity of the material was not immediately apparent; and several boxes and smaller containers of unknown material. At least some of this material was later shipped off as hazardous waste, as alleged in paragraph 53 (see, for example references to sulfuric acid waste on Manifests 000808766VES and 000808795VES).

b. Outside waste storage area: As alleged in paragraph 51 above, there were totes and barrels of waste in the outdoor waste storage area for which inadequate waste determinations had been made. Some of the waste was marked "hold for inspection" (e.g., containers of sodium chlorite solution, phosphoric acid, and acetone + xylene) and some marked "to be dispositioned or recycled" (e.g., isopropanol and caustic soda solution). This material was later shipped off as hazardous waste, as alleged in paragraph 53.

63. Accordingly, Respondents violated the hazardous waste determination requirements of 2010 RI Rule 5.8.

Count V: Failure to Separate Incompatible Wastes In Violation of RCRA

64. Paragraphs 1-63 are realleged and incorporated by reference.

65. Pursuant to 2010 RI Rule 5.2, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

66. Pursuant to 40 C.F.R § 262.34(a)(1), a generator must comply with, among other requirements, the provisions of 40 C.F.R. Part 265, Subpart I for containers storing hazardous waste.

67. Pursuant to 40 C.F.R. § 265.177(c), a storage container holding a hazardous waste that is incompatible with any waste nor other materials stored nearby in other containers must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

68. As alleged in paragraphs 39(c)(vi) and 51 above, in the outdoor waste storage area, Respondents were storing incompatible hazardous wastes together that were not separated by means of a dike, berm, wall or other device.

69. Accordingly, Respondents' failure to separate or protect containers holding hazardous waste from containers storing incompatible waste or other materials, violated 2010 RI Rule 5.02.

Count VI: Failure to Have Adequate Containment Systems for Containers of Hazardous Waste

70. Paragraphs 1-69 are realleged and incorporated by reference.

71. Pursuant to 2010 RI Rule 5.2, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

72. Pursuant to 40 C.F.R § 262.34(a)(1), a generator must comply with, among other requirements, the provisions of 40 C.F.R. Part 265, Subpart I for containers storing hazardous waste.

73. Pursuant to 40 C.F.R. § 265.175, container storage areas must have a containment system that, among other things, must have sufficient capacity to contain 10% of the volume of the containers or the volume of the largest container, whichever is greater.

74. As alleged in paragraphs 39(c)(vi) and 51 above, in the outdoor waste storage area, Respondents were storing hazardous wastes. This container storage area had no containment system.

75. Accordingly, Respondents' failure to have a containment system for the outdoor waste storage area violated 2010 RI Rule 5.02.

Count VII. Failure to Adequately Train All Employees with Hazardous Waste Management Responsibilities

76. Paragraphs 1-75 are realleged and incorporated by reference.

77. Pursuant to 2010 RI Rule 5.2, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

78. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with, among other requirements, 40 C.F.R. § 265.16.

79. Pursuant to 40 C.F.R. § 265.16(a)(1), employees who manage hazardous wastes must complete a hazardous waste management training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA.

80. Pursuant to 40 C.F.R. § 265.16(a)(2), the training program must be directed by a person trained in hazardous waste management procedures and must include instruction that teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed (i.e., "initial RCRA training').

81. Pursuant to 40 C.F.R. § 265.16(b) and (c), employees who manage hazardous waste must successfully complete the program within six months after the date of their employment; must not work in unsupervised positions until they have completed the training requirements; and must take part in an annual review of the training (i.e., have annual RCRA training).

82. Pursuant to 40 C.F.R. § 265.16(d), the owner or operator must have a RCRA training program, with documents and records of the following: (1) the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job; (2) a written job description for each such position, including the requisite skill, qualifications, and duties of facility personnel assigned to each position; (3) a written description of the type and amount of both introductory and continuing training that will be given to each person in a position related to hazardous waste management; and (4) records that document that the training required has been given to, and completed by facility personnel.

83. Pursuant to 40 C.F.R. § 265.16(e), the owner or operator of the facility must maintain hazardous waste training records on all current personnel until the facility is closed. For former employees, such records must be maintained for at least three years after their last work date at the facility.

84. According to training documentation received from Respondents on May 17, 2013, only one employee was trained before the 2013 Inspection. He was trained on November 15, 2012. Subsequent to the 2013 Inspection, six additional employees were trained on April 26, 2013. When asked for training documentation, including documentation of the training program, Respondents provided training certificates and a Power Point presentation of the training received. However, Respondents did not provide any other documentation showing compliance with the training program requirements of 40 C.F.R. § 265.16(d)(1)-(3), which are listed in paragraph 82 above.

85. Accordingly, Respondent's failure to document its training program, as described above in paragraph 84, violated 2010 RI Rule 5.2, which incorporates by reference 40 C.F.R. § 262.34(a)(4), which in turn incorporates by reference 40 C.F.R. § 265.16.

Count VIII. Failure to Label Containers of Hazardous Waste with the Words "Hazardous Waste," a Description of the Contents, the Date of Accumulation, or the Waste Code;

86. Paragraphs 1-85 are realleged and incorporated by reference.

87. Pursuant to 2010 RI Rule 5.4 A., a generator must label the side of all hazardous waste containers, excluding satellite accumulation, in accordance with the provisions of 40 C.F.R. § 172 and include (a) the words "hazardous waste"; (b) the generator's name and address; (c) the USDOT shipping name and the generic names of the principal hazardous waste components; (d) the EPA or Rhode Island waste code; (e) the dates of containerization (accumulation start date); and (f) the hazardous waste manifest number (prior to being shipped off-site).

88. Additionally, 2010 RI Rule 5.4B requires that the generator must label and mark every container, excluding those in satellite accumulation in accordance with the provisions of 40 C.F.R. § 262.32, which includes some of the above labeling requirements as well as the generator's waste identification number.

89. The Department of Transportation regulations found at 40 C.F.R. § 172, referenced in both 2010 RI Rule 5.4 and 40 C.F.R. § 262.32, contain requirements for, among other things, label durability, size, language, color, and special depictions for each type of material.

90. Finally, 2010 RI Rule 5.2 requires that any hazardous waste stored on site by a generator for a period of 90 days or less must be managed in accordance with 40 C.F.R. § 262.34, which additionally requires that, during storage, the date upon which each period of accumulation begins is clearly marked and visible for inspection.

91. As discussed in paragraphs 50 and 51, during the 2013 Inspection, the EPA inspectors saw two areas where hazardous wastes were being stored. One area inside Warehouse A had two pallets of waste that were later shipped off as hazardous waste, including, among other things, approximately 14 five-gallon containers of waste, three jugs of waste for which the identity of the material was not immediately apparent; and several boxes and smaller containers of unknown waste. The outside storage area had a pile of ten 55-gallon drums and eleven 275-gallon totes, which were, likewise, shipped off as hazardous waste. A few containers in those two areas had a description of the contents, but none appeared to have the words "Hazardous Waste," the dates of accumulation, or the waste code. Nor were the labels clearly visible for inspection.

92. Accordingly, Respondents' failure to appropriately label its containers of hazardous waste violated 2010 RI Rules 5.2 and 5.4.

Count IX: Failure to Maintain Adequate Aisle Space Between Containers of Hazardous Waste

93. Paragraphs 1-92 are realleged and incorporated by reference.

94. Pursuant to 2010 RI Rule 5.2, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34. In turn, 40 C.F.R. § 262.34(a)(4) requires generators to comply with the preparedness and prevention requirements of 40 C.F.R. Part 265 Subpart C, including the requirement in C.F.R. 40 C.F.R. § 265.35 to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless aisle space is not needed for any of these purposes.

95. As alleged in paragraph 51, outdoors, the EPA inspectors witnessed a pile of ten 55-gallon drums and eleven 275-gallon totes in a waste storage area, which wastes were later shipped off-site as hazardous waste. The containers were stored up to two-tiers high with no aisle space.

96. Respondents' failure to maintain aisle space between containers of hazardous waste violated 2010 RI Rule 5.2, which references 40 C.F.R. § 262.34, which in turn references the requirements of 40 C.F.R. Subpart C.

Count X: Failure to Minimize Threat of Release

97. Paragraphs 1-96 are realleged and incorporated by reference.

98. Pursuant to 2010 RI Rule 5.2, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34. In turn, 40 C.F.R. § 262.34(a)(4) requires generators to comply with the preparedness and prevention requirements of 40 C.F.R. Part 265 Subpart C, including the requirements of 40 C.F.R. § 265.31. Forty C.F.R. § 265.31 requires that facilities be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

99. As alleged in paragraph 39(c)(vi), the outside hazardous waste staging area contained co-located incompatible hazardous wastes that, if mixed, could cause an unplanned sudden fire, explosion, or release of hazardous waste or hazardous waste constituents. Due to the lack of containment in this area, the dangers associated with the chemicals and their reactions with co-located incompatible chemicals, and the proximity of surface water, a release of hazardous waste or hazardous waste constituents from this staging area could go to the air, soil, or surface area and threaten both human health and the environment.

100. Respondents' failure to operate the Facility so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water violated 2010 RI Rule 5.2, which references 40 C.F.R. § 262.34, which in turn references the requirements of 40 C.F.R. Part 265 Subpart C.

V. ORDER AND COMPLIANCE OBLIGATIONS

101. **RCRA**: Accordingly, pursuant to Section 3008(a) and (b) of RCRA, 42 U.S.C. §§ 6928(a) and (b), Respondents shall achieve and maintain compliance with all applicable requirements of RCRA. Within 15 days of the effective date of this Order, and once again 365 days from the effective date of this Order, Respondent shall submit to EPA written confirmation of its continued compliance or noncompliance with the RCRA generator requirements of RI Rule Chapter 5 (accompanied by a copy of any appropriate supporting documentation). Any notice of noncompliance shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance, unless EPA agrees otherwise in writing or approves a delay pursuant to the Force Majeure provisions of Section IX.

102. **CAA**: Pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), it is hereby ordered that Respondents shall take the following actions to correct the violations of the General Duty Clause cited in Counts I and II above and maintain compliance with the General Duty Clause. By each deadline listed below, Respondents shall submit to EPA written confirmation of compliance or noncompliance with the required action (accompanied by a copy of any appropriate supporting documentation, including documentation of costs). Any notice of noncompliance shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance unless EPA agrees otherwise in writing or approves a delay pursuant to the Force Majeure provisions of Section IX. Unless otherwise specified below or otherwise approved by EPA, compliance with Mann's EPA-approved Hazardous Material Storage Plan, the most recent versions of the state fire code, and NFPA standards shall, for purposes of enforcing this Order, constitute compliance with the General Duty Clause's requirement to design and maintain a safe facility. Before requesting EPA to approve deviations that might not be consistent with the state fire code and the NFPA standards referenced by the fire code, Respondents must receive the fire department's approval of the deviation.

First Compliance Certification

a. **By 30 days after the effective date of this Order, submit to EPA written confirmation that Respondents have:**
    1. Inspected the Facility's fire alarm system in accordance with the system's inspection schedule and instituted operating procedures to ensure that such inspections continue; and
    2. Instituted procedures to ensure that appropriate emergency response authorities are notified of any future chemical spills in accordance with

state and federal disclosure laws, such as EPCRA Section 304 and CERCLA Section 103.

Hazardous Material Storage Plan Submittal

b. **Also, by 30 days after the effective date of this Order, Respondents shall submit to EPA for approval a new *Hazardous Material Storage Plan* to ensure that chemicals at the facility are properly separated and stored. This document shall:**

1. Reflect the practices for incompatible chemical segregation found in Appendix 1 of the September 30, 2011 Notice of Violation and Administrative Order; the Chemical Reactivity Worksheets found at http://response.restoration.noaa.gov/reactivityworksheet; and generally accepted industry standards, such as Guidelines for Safe Warehousing of Chemicals, Chapter 2.6.; Material Safety Data Sheets; NFPA 1, Section 66.9.17; and NFPA 400.
2. Require that flammable chemicals no longer be stored up against the building, in accordance with NFPA 1, 66.15.4.3 referencing 66.15.4.1 (which specifies that a 10 foot clearance space along the common wall is needed if storing more than 1100 gallons of flammable liquids next to an adjacent building wall);
3. Require adequate materials separation in all rooms of the warehouses and in all outdoor storage areas, following generally accepted standards such as NFPA 30, Chapter 12.3 (2008); NFPA 1, Chapter 60 (2010) and NFPA 400, which establishes different aisle space requirements for different types of chemicals (see index);
4. Require that containers be stored so that contents can be identified by reading the container's label from the aisle; and
5. Restrict storage of relevant chemicals to the specific chemicals and the maximum allowable amounts that can safely be stored in areas protected by the new fire suppression system, following generally accepted standards such as the Rhode Island Fire Safety Code Section 7, which incorporates by reference NFPA 1 (2012 ed.), which in turn references NFPA 400 (2010 ed.). For example, this may require reducing the amounts of oxidizers stored in the warehouse and storing pyrophoric chemicals in a separate outdoor storage unit;
6. Require secondary containment for outside storage of certain extremely hazardous substances, following generally accepted standards such as Section 2704.2.2; NFPA 1, Fire Code, Section 60.5.1.3.1 (2012 edition incorporated by reference into the Rhode Island Fire Safety Code, Section 7); NFPA 1 Section 60.5.1.1, which states that "storage of hazardous materials in quantities exceeding the maximum allowable quantity permitted in control areas set forth in Section 60.4 [of NFPA 1] shall comply with Section 6.2 of NFPA 400 and the applicable material-specific requirements in Chapters 11 through 21 of NFPA 400," which in turn requires that corrosive liquids and toxic liquids, among other types of hazardous materials, be

provided with secondary containment when stored outdoors in amounts exceeding the maximum allowable quantity (see Table 6.2.7.3.2 of NFPA 400 for secondary containment requirements and Table 5.4.1.2 for maximum allowable quantities); and NFPA's requirements for flammable liquids at NFPA 66.15.3.5 (outdoor storage of flammable liquids shall be graded in a manner to divert possible spills away from buildings or shall be surrounded by a curb of at least 6 inches).

i. For outside storage of chemicals, as an alternative to complying with the storage, grading, and containment requirements in **subparagraph (b)(2)(5) and (6)** above, Respondents may propose, with fire department approval to; (1) move liquids storage inside with the exception of the flammable liquids, provided such liquids storage does not violate other fire code and NFPA requirements or result in improper co-location of incompatible chemicals; (2) move flammable liquids to appropriately fire-rated 40-foot containers located at the end of the building; (3) move the dry goods to a fire code-compliant off-site warehouse, although some may be staged at the Facility for immediate distribution; and (4) store only empty totes and drums outside in the open; (5) or propose alternatives to any of the above that are approved in advance by EPA .

7. Include a schedule for implementing any aspect of the *Hazard Material Storage Plan* that cannot be implemented immediately (for example, due to the need for construction or purchasing 40-foot containers).

The requirements of the *Hazard Material Storage Plan*, including the schedule, shall be enforceable under this Order.

Install Fire Suppression System

c. **By 60 days after the effective date of this Order**, submit to EPA written confirmation that it has installed an operational fire suppression system meeting the requirements of the Rhode Island Fire Safety Code and the approval of the Warwick Fire Department. Respondents have purchased the system, the City water main has been extended, and eminent domain and pipe alignment issues associated with reconstruction of the adjacent rotary have been resolved. However, Respondents require one more County and Fire Department approval before they can install the system. The 60-day deadline provides time for this review and approval. However, if such approval is delayed or if, for weather-related reasons, installation must be delayed, Respondents may invoke the Force Majeure provisions of Section IX to argue that EPA should extend the deadline.

Third Party Inspection Program

d. **Third-Party Inspection Program:** Because EPA has found repeat violations of the General Duty Clause at the Facility, Respondents have agreed to institute a third-party inspection program at the Facility to improve and confirm compliance. As more specifically described below, the program will require (a) hiring a qualified third-party auditor; (b) conducting four third-party inspections over the course of at least one year, three of which will be unannounced; (c) documenting the inspections through photographs, film, and written reports; and (d) providing the inspection documentation to the local fire department and EPA.

    1. Within **15 days of the effective date of this Order,** Respondents shall engage a third-party inspection team ("Team") and submit the Team members' resumes and qualifications to EPA. The Team shall have at least one person with chemistry expertise acceptable to EPA, one expert in environmental compliance auditing, and one expert in chemical process safety management. One Team member may fulfill more than one of these expertise requirements, but the Team shall have at least two people for inspection safety reasons.

    2. To ensure the Team's independence from Respondents and promote thorough inspections:
        i. No member of the Team may have previously performed work for Respondents or for any of Respondents' officers, although Team members who previously bid on projects but did not receive work from Respondents may participate;
        ii. No member of the Team shall be allowed to work for Respondents or for any of Respondents' officers for five years after the inspections are completed;
        iii. Once the Team has given Respondents notice of the first upcoming inspection, no communication shall occur between Respondents and the Team without EPA simultaneously being copied on the communication (except such communications that occur on-site while the inspections are being conducted). Accordingly, all such communication must be by e-mail or letter so that EPA may be copied.
        iv. Respondents shall have no control over the timing of the second, third and fourth inspections.
        v. Before conducting the first inspection, each member of the Team shall have:
            1. Read this Order; the 2009 and 2011 Orders; the hazard analysis conducted pursuant the 2009 Order; the Respondents' *Hazardous Material Storage Plan*; Appendix 1 of the September 30,

2011 Notice of Violation and Administrative Order; the Center for Chemical Process Safety's *Guidelines for Safe Warehousing of Chemicals*; *EPA's Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000)*; the Material Safety Data Sheets for the chemicals at the Facility; and the NFPA 1, 30, and 400 chapters cited in this Order; and

2. Become familiar with *CAMEO Chemicals* – in particular the function used to predict chemical reactivity.

Also, before providing notice of the first inspection, it is permissible for the Team to visit the Facility for purposes of bidding on Third-Party Inspection Program work.

vi. Respondents shall provide the Team with unimpeded access to the whole Facility on any day that Respondents are operating. Respondents shall also permit the Team to take photographs and film its inspections.

vii. Respondents shall not have an opportunity to review or comment on inspection reports or drafts thereof before the Team sends them to EPA and Respondents.

3. *Inspections*:

i. The Team shall conduct four inspections within 11 months of the effective date of this Order.

ii. The purpose of the first inspection is to give all parties the opportunity to assess how Respondents manage their extremely hazardous substances when Respondents are operating with the highest level of care. Accordingly, the Team shall give Respondents and EPA at least 14 days of days of notice before the first inspection. **This first inspection must occur by 90 days after the effective date of this Order, at the very latest.**

iii. The next three inspections shall be unannounced, with no notice to Respondents but with three days of notice to EPA.

iv. EPA and/or the Warwick Fire Department shall have the right to accompany the Team on any inspection.

v. The Team shall inspect the whole Facility, indoors and outdoors, for compliance with Clean Air Act Section 112(r), including but not limited to determining whether the following

dangerous conditions found in 2009, 2011, and/or 2013 are occurring:

1. Failure to identify hazards which may result from accidental releases of extremely hazardous substances (for example, failing to identify new hazards that have arisen since Respondents completed their last hazard analysis);
2. Failure to chock wheels of any present rail car containing chemicals;
3. Failure to prevent leaks and run-off from outdoor containers and dilution operations;
4. Failure to separate incompatible chemicals;
5. Failure to maintain adequate aisle space;
6. Failure to have, maintain, and test fire suppression, detection, and alarm systems;
7. Failure to store flammable chemicals at an appropriate distance from building;
8. Failure to have – and maintain -- secondary containment for extremely hazardous substances stored outside in tanks and containers;
9. Failure to have chemical containers closed, properly labeled, and with labels situated such that they can be read by staff, emergency responders, and inspectors;
10. Failure to have proper procedures to notify emergency responders in the event of a release.

In addition, the Team shall review inventory records created since the last EPA or Team inspection (whichever is later) to ensure that Respondents have not triggered the requirements of 40 C.F.R. Part 68 by storing chemicals listed in 40 C.F.R. § 68.103 above regulatory thresholds.

4. *Documentation of the inspections*:
   i. Within 60 days of the effective date of the Order, the Team shall submit to Respondents and EPA a draft inspection report format that it wishes to use (the "Draft Report Format"), which EPA shall endeavor to review before the first inspection. A checklist format is allowable, provided that the report is broken down by room and outdoor area visited and provides detailed information about any deficiencies found.

   ii. The Team shall, within 15 days after each inspection, simultaneously submit to EPA and Respondents an inspection report, photographs, and a digital video of the inspection ("Inspection Report"). Respondents' shall not have the

opportunity to review any draft or final Inspection Report before such submittal.

iii. EPA may require prospective changes to the format and content of the inspection documentation at any point during the duration of the third-party inspection program.

5. *Respondents' response to the Inspection Report*: Respondents shall have an opportunity to respond to each Inspection Report if so desired by submitting its comments on the Inspection Report to EPA and the Team within five business days of receiving the Inspection Report.

6. *Correction of violations:* Within 20 days of receiving the Inspection Report, Respondents shall correct any violations found by the Team and send a letter to EPA confirming that the violations have been corrected unless the parties agree that another deadline is appropriate.

7. *Preservation of inspection documentation*: The Team and Respondents shall keep copies of all Inspection Reports, photographs and digital films for three years.

8. *Discovery of environmental violations other than CAA Section 112(r):* The Team shall notify Respondents if it finds any non-CAA Section 112(r)-related violations of EPA-administered statutes (for example, violations of RCRA, Clean Water Act, FIFRA, or TSCA), and Respondents shall correct those violations within 20 days of receiving the Inspection Report. However, such violations need not be included in the inspection report unless the Team believes that the violation could present an imminent and substantial endangerment to human health or the environment.

9. *Notification of imminent and substantial endangerments:* Respondents shall notify EPA immediately by telephone and e-mail if the Team discovers any condition at the Facility that could pose an imminent and substantial endangerment to human health or the environment.

10. *Third-Party Inspection Program Assessment*: **Within one year of the effective date of this Order**, Respondents shall submit to EPA a brief one-page or summary assessment of the Third-Party Inspection Program, containing the following:

    i. Total cost of the program, excluding costs to address any violations found by the Team;
    ii. Summary of the benefits of the program, including feedback from Respondents and the Team;
    iii. Criticisms of the program, including feedback from Respondents and the Team;

iv. Any suggestions for future improvements to a Third-Party Inspection Program;

e. Approval of Deliverables:

i. After review of any document that is required to be submitted pursuant to this Order (the "Submission"), including but not limited to the Draft Report Format, EPA shall, in writing (i) approve the Submission; (ii) approve the Submission with specified conditions; (iii) approve part of the Submission and disapprove the remainder; or (iv) disapprove the Submission. This subparagraph shall not apply to the Inspection Reports required by subparagraph (d)(4)(ii) and Respondents' response to such Inspection Reports (see subparagraph (d)(5)), as those documents do not require EPA review and approval.

ii. If the Submission is approved, Respondents shall take all actions required by the Submission in accordance with the schedules or requirements therein. If the Submission is conditionally approved or approved only in part, Respondents shall, upon written direction from EPA, take all actions required by the Submission that EPA determines are technically severable from any disapproved portions, subject to Respondent's right to dispute only the specified conditions or the disapproved portions, under Section VIII of this Order (Dispute Resolution).

iii. If the Submission is disapproved in whole or in part, Respondents shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Submission, or disapproved portion thereof, for approval in accordance with the preceding subparagraphs. If the resubmission is approved in whole or in part, Respondents shall proceed in accordance with the preceding subparagraphs.

iv. Any stipulated penalties applicable to the original Submission, as provided in Section VII of this Order, shall accrue during the 30-day period or other specified period during which deficiencies are being corrected, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part.

v. If a resubmission or portion thereof is disapproved in whole or in part, EPA may again require Respondents to correct any deficiencies, in accordance with the preceding subparagraphs, subject to Respondents' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding subparagraphs.

f. Notifications:

i. Submissions required by this Order shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail Code OES05 -1
Boston, MA 02109-3912
Attn: Jim Gaffey

gaffey.jim@epa.gov

ii. EPA will send all written communications to the following representative(s) for Respondents:

Tom O'Donnell
Manager, Mann Distribution LLC
65 Walnut St.
Peabody, MA 01960
Thomas.odonnell@tannincorp.com

Harlan Doliner
Verrill Dana LLP
One Boston Place
Suite 1600
Boston, MA 02108
hdoliner@verrilldana.com

g. All documents submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 C.F.R. Part 2 Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

h. Summary of Compliance Obligations: The attached chart summarizes the compliance obligations under this Order.

Deadline	Requirement	Reference
Within 15 days of the effective date of this Order	1) Submit resumes and qualifications of Third Party Inspection Team 2) RCRA compliance confirmation	Section V, paragraph 102(d)(1) Section V, paragraph 101
Within 30 days of the effective date of this Order	1) 1st CAA compliance confirmation for: • Fire alarm testing and operating procedures • Procedures for notifying appropriate emergency response authorities about spills 2) Submit *Hazardous Material Storage Plan* including enforceable schedule for implementing items that cannot be implemented immediately.	Section V, paragraph 102(a) and (b)
Within 60 days of the effective date of this Order	1) 2nd CAA compliance confirmation for: • Installing fire suppression system 2) Draft inspection report format submitted for third-party inspection program	Section V, paragraph 102(c) Section V, paragraph 102(d)(4)(ii)
Within 90 days of the effective date of this Order, at the latest	Third-party Team must have completed first inspection **with 14 days advance notice to all parties**	Section V, paragraph 102(d)(3)(ii)
Within 105 days of the effective date of this Order at the latest	Third-party Team submits first inspection report to Respondents and EPA	Section V, paragraph 102(d)(4)(i)
Within 110 days of the effective date of this Order at the latest	Respondents' response to inspection report due, if Respondents desire to respond	Section V, paragraph 102(d)(5)
Within 20 days of receiving Inspection Report	Respondents confirm that violations found by third-party Team have been corrected	Section V, paragraph 102(d)(6), 102(d)(8)
Between 125 days after the effective date of this Order and 11 months after effective	Three additional third-party inspections completed. After each inspection: • Third-party Team submits inspection report to Respondents and EPA within 15 days of inspection • Any response by Respondents to inspection report due within 5 business days of receiving inspection	Section V, paragraph 102(d)(3)(i), 102(d)(4)(i), 102(d)(5), 102(d)(6),

date of Order	report. • Respondents confirm by e-mail that violations found in inspection have been corrected within 20 days of receiving Inspection Report.	102(d)(8)
Within 12 months of the effective date of the Order	1) Respondents submit Third-Party Inspection Program Assessment 2) Respondents submit second RCRA compliance certification	Section V, paragraph 102(d)(10) Section V, paragraph 101

VI. ACCESS

103. Respondents hereby authorize EPA, its contractors, employees, and duly designated EPA representatives, and members of the Team to, at all reasonable times, enter and freely move about the Facility for the purpose of interviewing facility personnel and contractors; inspecting records; reviewing the progress of Respondents in carrying out the terms of this Order; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondents. Respondents shall permit such persons to inspect and copy all records, files, photographs, and documents, that pertain to the work being conducted under this Order and that are within the possession or under the control of Respondents or its contractors or consultants. Nothing in this paragraph, limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including the CAA and RCRA. However, due to the presence of extremely hazardous substances at the Facility, at the time of access, Respondents may provide visitors with safety advice.

VII. STIPULATED PENALTIES

104. Respondents must pay the following stipulated penalties to the United States for failure to complete the obligations of this Order in a manner consistent with its terms or by the time required by this Order:

a. $1,000 per day for the first fifteen (15) days of such violation;
b. $1,500 per day for the sixteenth (16^{th}) through thirtieth (30^{th}) day of such violation; and
c. $2,000 per day for each day of such violation, thereafter.

The amount of penalties accrued shall be subject to the limitations of CAA Section 113(d)(1) on EPA's administrative penalty authority: Also, stipulated penalties shall not apply when there has been an excusable delay, as defined in Section IX, "Force Majeure."

105. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of

separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified Respondents of a violation.

106. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of the Respondents' receipt from EPA of a written demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section VIII, "Dispute Resolution." Such a written demand will describe the violation and will indicate the amount of penalties due.

107. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

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

All such checks shall reference "*In the Matter of Mann Distribution LLC., Clean Air Act and RCRA Order on Consent, EPA Region 1*" and Respondents' name and address. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA contact listed in Section V, paragraph 102(f).

108. Respondents may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section VIII. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondents shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondents shall submit such payment to EPA within thirty (30) days of receipt of such resolution in accordance with Paragraph 107 of this Section.

109. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligation to comply with the terms and conditions of this Order.

110. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the terms and conditions of this Order.

111. No payments under this section shall be tax deductible for federal tax purposes.

VIII. DISPUTE RESOLUTION

A. Informal Dispute Resolution

112. The parties shall use their best efforts to resolve all disputes informally. If the dispute is resolved through informal dispute resolution, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this Order, and any requirements or schedules therein shall become enforceable requirements of this Order. If, however, disputes arise concerning this Order which the parties are otherwise unable to resolve, the parties shall utilize the procedures set forth in Subsection B, "Formal Dispute Resolution," below. Unless otherwise agreed to by EPA, the informal dispute resolution period may not last longer than thirty (30) days from the day that the issue in dispute is raised.

B. Formal Dispute Resolution

113. In the event that the parties cannot resolve a dispute by informal negotiations under either Paragraph 112 of Subsection A, "Informal Dispute Resolution," the position advanced by EPA shall be considered binding unless Respondents invoke the formal dispute resolution procedures as outlined below:

a. Initiation of formal dispute resolution: If Respondents disagree, in whole or in part with any written decision ("Initial Written Decision") by EPA pursuant to this Order, except those decisions that are not subject to review, Respondents shall submit to EPA a formal notice of objection to EPA's Initial Written Decision. The notice of objection must contain the bases for Respondents' objection, including but not limited to any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Respondents. Respondents must submit the notice of objection within five (5) days after the termination of the informal dispute resolution period.

b. Formal dispute resolution period: After EPA receives Respondents' notice of objection, the parties shall then have an additional ten (10) days from EPA's receipt of Respondents' objections to attempt to resolve the dispute. During this period, Respondents may request a meeting with the Director of the Office of Environmental Stewardship, EPA Region 1 in order to make an oral presentation of its position and may bring to that meeting, at Respondents' sole discretion, a qualified engineer or other trained and licensed technical consultant with expertise relevant and applicable to the nature of the dispute, to assist Respondents in presenting the basis for its objections with regard to any technical dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this Order, and any requirements or schedules therein shall become enforceable requirements of this Order.

c. EPA Dispute Decision: If EPA and Respondents are unable to reach agreement within the period specified in Paragraph 113.b. above, the Director of the Office of Environmental Stewardship shall notify Respondents, in writing, of his or her decision and the bases for that decision within seven (7) days (hereinafter referred to as the "Dispute Decision.") Such decision shall be final and incorporated into this Order. Any requirements or schedules therein shall become enforceable requirements of this Order.

d. Use of Alternative Dispute Resolution: The parties may, upon mutual consent, use ADR during the formal dispute resolution period.

114. Except as provided in Section VII, "Stipulated Penalties," the existence of a dispute as defined in this section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process, unless the nature of the dispute involves the technical feasibility of the compliance obligation.

115. Within seven (7) days after either (a) reaching a dispute resolution agreement under Subsection A of this section or (b) receiving EPA's Dispute Decision under Paragraph 113.c. of this subsection, Respondents shall notify EPA that it has initiated compliance with the requirements of the agreement or decision. In the event that Respondents fail or refuse to comply, EPA may take such enforcement actions as are authorized by law. Except as expressly waived in this Order, Respondents reserve all rights, remedies and defenses it may have under law or in equity against such enforcement actions.

116. EPA may extend the time periods established in this Section upon notice to Respondents.

IX. FORCE MAJEURE AND EXCUSABLE DELAY

117. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondents or any person or entity controlled by Respondents, including but not limited to Respondents' contractors, which delays or prevents the timely performance of any obligation under this Order. Force majeure does not include increased costs of the work to be undertaken under this Order, financial inability to complete the work, work stoppages or other labor disputes. Force majeure does include weather events and other changes in the condition of the natural environment that could impact the work, the acts of unrelated third parties that interfere with Respondents' ability to perform, acts of God, war, riot, terrorism, compliance with any law, or compliance with any governmental or court order, rule, pre-approval requirements, or directions.

118. If Respondents wish to claim a force majeure event, then within 5 days of learning of the potential for delay, Respondents must notify EPA of the potential for delay and within 15 days provide EPA in writing all relevant information relating to the delay, including all actions taken or to be taken to prevent or minimize the delay and a proposed revised schedule. Respondents shall include with any notice all available documentation supporting its claim. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event. Respondents shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

119. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation.

120. If EPA disagrees with Respondents' assertion of a force majeure event, EPA will notify Respondents in writing, and Respondents may elect to invoke the dispute resolution provision. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this Section. If Respondents satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

X. EFFECT OF SETTLEMENT, RESERVATION OF RIGHTS, AND JUDICIAL REVIEW

121. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.

122. This Order on Consent does not resolve any civil or criminal claims of the United States for the violations alleged in this Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under RCRA, the CAA, or other applicable federal law or regulation. See CAA Section 113(a)(4), 42 U.S.C. §7413(a)(4).

123. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of RCRA or the CAA's General Duty Clause. Compliance by

Respondents with the terms of this Order shall not relieve Respondents of their obligations to comply with RCRA, the CAA, or any other applicable local, State, or federal laws and regulations.

124. Respondents have entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondents reserve all rights and defenses they may have regarding liability or responsibility for conditions at the Facility, except that, for the purpose of this proceeding, Respondents admit the jurisdictional allegations in this Order; neither admit nor deny specific factual allegations made in the Order; consent to the compliance actions and conditions specified in the Order; and waive any rights to contest the allegations or to appeal the final Order.

125. Respondents waive any rights to judicial review of the Order under CAA Section 307(b)(1), 42 U.S.C. § 7607(b)(1). Respondents also waive any right to a RCRA hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), 40 C.F.R. § 22.37(b), and 40 C.F.R. § 22.15.

126. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

127. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondents or their employees, agents, contractors or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by Respondents or by their employees, agents, contractors, or consultants.

128. The parties shall bear their own costs and fees in this action, including attorney's fees.

XI. MODIFICATION

129. This Order may only be modified by mutual agreement of EPA and Respondents. Any agreed-upon modifications shall be in writing, be signed by both parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Order.

XII. SEVERABILITY

130. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be

invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XIII. TERMINATION

131. The Order shall terminate of its own accord one year after the effective date of the Order, in accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4). Although RCRA does not contain limitations on the duration of RCRA administrative orders, the parties agree that the RCRA obligations of this Order shall also terminate one year after the effective date of the Order.

XIV. EFFECTIVE DATE AND SIGNATURES

132. The RCRA requirements of the Order are subject to 40 C.F.R. Part 22. Thus, although the CAA requirements may take effect upon signature of the Order by the Director of the Office of Environmental Stewardship, the RCRA requirements herein may only take effect after the Regional Judicial Officer issues a final order and such order is filed with the Regional Hearing Clerk, in accordance with 40 C.F.R. Sections 22.1(a)(4), 22.13(b), and 22.18(b)(2) and (3). For ease of administration, the parties agree that all aspects of this Order will take effect once the Order is filed with the Regional Hearing Clerk.

133. The undersigned representative(s) of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondents to it.

IT IS SO AGREED:

DATE: Feb 19, 2015 BY: _____
Tom O'Donnell
Manager
Mann Distribution LLC

DATE: Feb 23, 2015 BY: _____
John V. Thompson
Manager
3134 Post LLC

IT IS SO ORDERED:

DATE: Susan Studlien BY: 03/13/15

Susan Studlien
Director, Office of Environmental Stewardship
U. S. Environmental Protection Agency
Region 1

FINAL ORDER

The RCRA requirements of the foregoing Order are subject to 40 C.F.R. Part 22. Thus, although the CAA requirements may take effect upon signature of the Order by the Director of the Office of Environmental Stewardship, the RCRA requirements may only take effect after the Regional Judicial Officer ratifies the agreement, issues a final order, and such order is filed with the Regional Hearing Clerk. 40 C.F.R. Sections 22.1(a)(4), 22.13(b), and 22.18(b)(2) and (3). The RCRA requirements of the foregoing Order are hereby ratified, and Respondents are hereby ordered to comply with them, effective on the date the Order is filed with the Regional Hearing Clerk.

Date: 3/17/15

LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

In the Matter of Mann Distribution LLC and 3134 Post Road LLC, Docket Nos: RCRA-01-2014-0005 and CAA-01-2014-0006