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



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| **In the Matter of:** | : | |
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| **Appalachian Power Company** | : | |
| **d/b/a American Electric Power** | : | **U.S. EPA Docket Number** |
| **1 Riverside Plaza** | : | **RCRA-03-2011-0238** |
| **Columbus, OH 43215** | : | |
| | : | |
| **Respondent,** | : | |
| | : | |
| | : | **Proceeding under Section 3008(a) and (g), and Section 9006(a) and (d) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6928(a) and and (g), and 42 U.S.C. Section 6991e(a) and 6991e(d)** |
| **American Electric Power** | : | |
| **John E. Amos Plant** | : | |
| **1530 Winfield Road** | : | |
| **Winfield, WV 25213** | : | |
| **Facility.** | : | |
| | : | |

## CONSENT AGREEMENT

## I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Appalachian Power Company doing business as American Electric Power ("Respondent" or "Appalachian"), pursuant to Sections 3008(a) and (g), and 9006(a) and (d) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. §§ 6928(a) and (g), and 6991e(a) and 6991e(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and

(3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

3. The State of West Virginia ("West Virginia" or "State") has received federal authorization to administer a Hazardous Waste Management Program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The West Virginia Hazardous Waste Management Regulations (hereinafter, "WVHWMR"), promulgated by the State pursuant to West Virginia Code Chapter 22, Article 18 (Hazardous Waste Management Act), originally were authorized by EPA on March 28, 1984, effective May 29, 1986 (51 Fed. Reg. 17739), pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the WVHWMR were authorized by EPA on May 10, 2000, effective July 10, 2000 (65 Fed. Reg. 29973) and October 16, 2003, effective December 15, 2003 (68 Fed. Reg. 59542). The provisions of West Virginia's current, authorized revised WVHWMR are set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (33 Code of State Regulations 20, abbreviated as 33CSR20, and hereinafter cited as WVHWMR § 33-21-1, *et seq.*). The provisions of the WVHWMR have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). In addition, on April 10, 1996 pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§6991-6991i. The authorization of West Virginia's underground storage tank program became effective on July 1, 1996. The provisions of West Virginia's authorized underground storage tank program regulations, set forth in the West Virginia Underground Storage Tank Regulations ("WVUSTR"), which incorporate by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 ed.), have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

4. Sections 3008(g) and 9006(d) of RCRA, 42 U.S.C. § 6928(g) and 6991e(d), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C and I, 42 U.S.C. §§ 6921-6939e and §§ 6991-6991i, and federally-authorized WVHWMR and WVUSTR requirements at its facility located at 1530 Winfield Road, Winfield, West Virginia (hereinafter, the "Facility").

5. In accordance with Sections 3008(a)(2) and 9006(a)(2) of RCRA, 42 U.S.C. §§ 6991e(a)(2), EPA notified the State of West Virginia of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C and I that are alleged herein.

## II. GENERAL PROVISIONS

6. Respondent admits the jurisdictional allegations set forth in this CAFO.

7. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in the paragraph immediately above.

8. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.

9. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

10. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

11. Respondent shall bear its own costs and attorney's fees.

12. The provisions of this CAFO shall be binding upon Complainant and upon Respondent, its officers, directors, employees, successors and assigns.

13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

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

14. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:

15. Respondent is a Virginia corporation that is headquartered at 1 Riverside Plaza, Columbus, Ohio, and is registered to do business as American Electric Power in the State of West Virginia.

16. Respondent is a "person" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

17. At all times relevant to this CAFO, Respondent has been the "owner" and "operator" of a facility located at 1530 Winfield Road, Winfield, West Virginia (the "Facility"), which includes a hazardous waste "container" storage area, as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

18. The Facility is a hazardous waste storage "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

19. As described below, Respondent is and, at all times relevant to this CAFO has been, a "generator" of "hazardous waste" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

20. At all times relevant to this CAFO, and as described below, Respondent has engaged in the "storage" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

21. Respondent is a small quantity generator of hazardous waste who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste per month.

22. Respondent is and has been, at all times relevant to this CAFO, the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.12, of an "underground storage tank" ("UST") and "UST system" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.12, located at the Facility.

23. On June 9, 2010, a duly authorized representative of EPA conducted a Compliance Evaluation Inspection ("CEI") of the Facility to assess the Respondent's compliance with federally authorized WVHWMR and WVUSTR requirements.

24. On March 30, 2011, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter ("IRL") to Facility representatives seeking additional information regarding certain of Respondent's hazardous waste management practices at the Facility and requesting the production of specified documents and information.

***Relevant Statutory Requirements***

25. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

26. Respondent has never been issued a permit pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at the Facility, and did not, at all times relevant to the violations alleged herein, have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.70.

***General Permit Exemption Conditions***

27. WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(d), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or having interim status provided, among other things, that:

    (a) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

    (b) The generator complies with the requirements of 40 C.F.R. Part 265, Subpart I (relating to use and management of containers), except for 40 C.F.R. §§ 265.176 and 265.178; and

    (c) The generator complies with the requirements of 40 C.F.R. § 262.34(a)(2) and 40 C.F.R. § 262.34(a)(3), the requirements of 40 C.F.R. Part 265, Subpart C, and the requirements of 40 C.F.R. § 268.7(a)(5).

28. 40 C.F.R. § 265, Subpart I, is incorporated by reference into WVHWMR § 33-20-5.1, with exceptions not relevant to the violations alleged in this CAFO.

29. 40 C.F.R. Part 265, Subpart I, at § 265.31, provides that the owner or operator of a hazardous waste facility must maintain and operate the facility 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.

30. 40 C.F.R. § 262.34(a)(2) and 40 C.F.R. § 262.34(a)(3) provides that the generator must assure that (1) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and that (2) while the container is being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste"; respectively.

***General Permit Exemption Conditions – Satellite Accumulation***

31. WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii), provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 40 C.F.R. § 262.34(a) provided, among other things, the generator marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the container.

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

32. The allegations of paragraphs 1 through 31 of this CAFO are incorporated herein by reference as though fully set forth at length.

33. At the time of the June 9, 2010 CEI, Respondent had two (2) 55-gallon containers of lead abatement waste which were not labeled with the words "Hazardous Waste" while in storage in Respondent's less-than-180-day hazardous waste storage area at the Facility.

34. At the time of the June 9, 2010 CEI, Respondent had one (1) 5-gallon container of silicone/acrylic concrete sealer waste which was not labeled with the words "Hazardous Waste" while in storage in Respondent's less-than-180-day hazardous waste storage area at the Facility.

35. At the time of the June 9, 2010 CEI, Respondent had in storage one (1) small container of hazardous waste, mercury thiocyanate, in the laboratory storage area at the Facility several rooms away from the point of generation of such waste and not under the control of the operator of the process generating such waste at the Facility.

36. At the time of the June 9, 2010 CEI, Respondent had two (2) 5-gallon containers of silicone/acrylic concrete sealer waste in Respondent's less-than-180-day hazardous waste storage area at the Facility that had released their contents of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment.

37. At the time of the June 9, 2010 CEI, Respondent had in storage one (1) small container of hazardous waste, mercury thiocyanate, in the laboratory storage area at the Facility that had released its contents of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment. In addition, the label of this container could not be identified because the contents of the container had released unto the label of such container.

38. At all times relevant to the violations alleged herein, "hazardous wastes" generated by Respondent were in "storage" in "containers" as described above, as those terms are defined by WVHWMR § 33-20-2.2.1, which incorporates by reference 40 C.F.R. § 260.10.

39. Respondent failed to qualify for the "satellite accumulation exemption" and the "less than 180 day" generator accumulation exemption of WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. § 262.34(c) and (d), for the activities and/or units described in Paragraphs 33 through 37, above, by failing to satisfy the conditions for such exemption as set forth in WVHWMR § 33-20-5, which incorporates by reference 40 C.F.R. §§ 262.34(c) and (d), as described in Paragraphs 27 through 31, above.

40. Respondent was required by WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the activities and/or units described in Paragraphs 33 through 37, above.

41. Respondent has never had a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of hazardous waste at the Facility as described in Paragraphs 33 through 37, above.

42. Respondent violated WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by owning and operating a hazardous waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

## COUNT II
### *(Failure to prevent releases of hazardous waste)*

43. The allegations of Paragraphs 1 through 42 of this CAFO are incorporated herein by reference as though fully set forth at length.

44. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31, provides that the owner or operator of a hazardous waste facility must maintain and operate the facility 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.

45. At the time of the June 9, 2010 CEI, Respondent's (2) 5-gallon containers of hazardous waste as described in Paragraph 36, above, had released its contents of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

46. At the time of the June 9, 2010 CEI, Respondent's container of hazardous waste as described in Paragraph 37, above, had released its contents of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

47. Respondent violated WVHWMR § 33-20-7.2 which incorporates by reference 40 C.F.R. § 264.31 by failing to maintain and operate its facility 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.

## COUNT III

***(Failure to perform hazardous waste determinations)***

48. The allegations of Paragraphs 1 through 47 of this CAFO are incorporated herein by reference as though fully set forth at length.

49. WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, provides that a person or municipality who generates a solid waste shall determine if that waste is a hazardous waste using the following procedures:

(i) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.

(ii) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261.

(iii) If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:

(A) testing the waste, or
(B) applying knowledge of the hazardous characteristic of the waste in light of the material or processes used.

50. Respondent generates used aerosol cans that are used for cleaning, painting and other operations at the Facility. The contents of the used aerosol cans meet the hazardous waste characteristic of ignitability (D001).

51. Respondent uses a resin curing agent that is used with an epoxy resin as part of a two-part epoxy to glue fiberglass reinforced pipe at the Facility. This product meets the hazardous waste characteristic of corrosivity (D002).

52. Respondent uses a coating product at the Facility identified by Respondent as Kure-N-Seal 25 LV. This product meets the hazardous waste characteristic of ignitability (D001).

53. The wastes referred to in Paragraphs 50 through 52, above, are and were "solid wastes" as this term is defined in WVHWMR § 33-20-3.1, which incorporates by reference 40 C.F.R. 261.2, with exception not relevant hereto.

54. At the time of the June 9, 2010 CEI, Respondent disposed of the "solid wastes" referred to in Paragraph 50, above, in the regular municipal landfill.

55. At the time of the June 9, 2010 CEI, Respondent did not know the characteristics of the solid waste referred to in Paragraphs 51 and 52, above.

56. Respondent failed to determine whether its "solid wastes" generated by Respondent at the Facility were hazardous waste by applying knowledge of the hazardous characteristics of the waste or by testing the waste as provided in WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11.

57. Respondent violated WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform hazardous waste determinations for the solid wastes generated at the Facility referred to in Paragraphs 50 through 52, above.

**COUNT IV-VI**

***(Improper management of universal waste)***

58. The allegations of Paragraphs 1 through 57 of this CAFO are incorporated herein by reference as though fully set forth at length herein.

59. WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), provides, in pertinent part, that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment by containing any lamps in containers or packages that are structurally sound. Such containers must remain closed.

60. WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.14(e) provides, in pertinent part, that a small quantity handler of universal waste lamps must label or mark clearly each lamp or a container or package in which such lamps are contained with the words "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

61. WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.15(a), provides, in pertinent part, that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, with exceptions not relevant hereto.

62. During the June 9, 2010 CEI, EPA inspectors saw open containers of used fluorescent lamps which were not labeled with the words "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)" that were in storage at Respondent's Facility.

63. During the June 9, 2010 CEI, EPA inspectors saw one (1) container of used batteries in storage at the Facility for longer than one year from the date the universal waste was generated, or received from another handler.

64. Respondent is a "generator" of used "batteries" and fluorescent "lamps" described above and such batteries and lamps are "universal waste" as these terms are defined in WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.9.

65. Respondent is a "small quantity handler of universal waste" as this term is defined in WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.9.

66. Based on the activities described in Paragraphs 62 and 63, above, Respondent violated WVHWMR § 33-20-13.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), .14(e), and .15(a), by accumulating universal waste batteries for longer than one year and storing used lamps in open and unlabeled containers without the words "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

## COUNT VII-VIII

***(Failure to store used oil in non-leaking container)***

67. The allegations of Paragraphs 1 through 66 of this CAFO are incorporated herein by reference as though fully set forth at length herein.

68. WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.22(b)(2), provides, in pertinent part, that used oil generators, that use containers to store used oil at

the facility, must use containers that are (1) in good condition (no severe rusting, apparent structural defects or deterioration); and (2) not leaking (no visible leaks).

69. WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.22(c)(1), provides, in pertinent part, that used oil generators, that use containers to store used oil must be labeled or marked clearly with the words "Used Oil."

70. During the June 9, 2010 CEI, EPA inspectors saw containers used by Respondent to store used oil generated at the Facility that were not labeled or marked clearly with the words "Used Oil".

71. During the June 9, 2010 CEI, EPA inspectors saw two (2) containers used by Respondent to store used oil generated at the Facility that were leaking and not in good condition.

72. Respondent is a "generator" of "used oil" as these terms are defined in WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.1.

73. Based on the activities described in Paragraphs 70 and 71, above, Respondent violated WVHWMR § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.22(b)(2) and .22(c)(1), by storing containers of used oil at the Facility that were not labeled or marked clearly with the words "Used Oil" and storing used oil in containers which were leaking and not in good condition.

## COUNT IX

***(Failure to perform release detection on UST)***

74. The allegations of Paragraphs 1 through 73 of the Complaint are incorporated herein by reference.

75. Pursuant to WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.40(a) and (c), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.

76. WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.41(a) provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(d) through (h), except that:

(1) UST systems that meet the performance standards in WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.20 (Performance Standards for New UST Systems) or WVUSTR Section 33-

30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(a) or (b) (Inventory Control or Manual Tank Gauging), and tank tightness testing, conducted in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(c) (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21(b) (Tank Upgrading Requirements); and

(2) UST systems that do not meet the performance standards in WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.20 (Performance Standards for New UST Systems) or WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(a) or (b) (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(c) (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Tank Upgrading Requirements) or permanently closed under WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.71; and

(3) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(b).

77. At the time of the June 9, 2010 inspection, and at all times relevant hereto, one (1) UST, as described in the following subparagraph, was located at the Facility:

A. a two thousand five hundred (2,500) gallon steel double-walled fiberglass-reinforced plastic tank that was installed in or about 1990 and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in WVUSTR Section 33-30-2.1 (40 C.F.R § 280.12) (hereinafter "UST No. 1").

78. UST No. 1, referenced in the immediately preceding Paragraph, is a "petroleum UST system" and a "new tank system" as defined in WVUSTR Section 33-30-2.1 (40 C.F.R § 280.12).

79. UST No. 1 was, at all times relevant to this CAFO, used to store and routinely contained "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and WVUSTR Section 33-30-2.1 (40 C.F.R § 280.12).

80. From May 3, 2010 until December 28, 2010, the method of release detection selected by Respondent for UST No. 1 was automatic tank gauging in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(d).

81. From May 3, 2010 until December 28, 2010, Respondent failed to perform automatic tank gauging for UST No. 1 at the Facility in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(d).

82. During the period of time indicated in Paragraphs 80 and 81, above, Respondent did not use any of the other release detection methods specified in WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R § 280.41(a)(1)-(3), and/or WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R § 280.43(d)-(h), on UST No. 1 located at the Facility.

83. Respondent's acts and/or omissions as alleged in Paragraphs 80 through 82, above, constitute violations by Respondent of WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R § 280.40(a) and (c), and WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R § 280.41(a).

## IV. CIVIL PENALTIES

84. Respondent agrees to pay a civil penalty in the amount of Forty Eight Thousand Six Hundred Twenty-Four Dollars (**$48,624.00**), in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this CA. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

85. The civil penalty settlement amount set forth in the paragraph immediately above was determined after consideration of the statutory factors set forth in Sections 3008(a)(3) and 9006(c) of RCRA, 42 U.S.C. § § 6928(a) and 6991e(c), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June,

2003 ("RCRA Penalty Policy"), and EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990 which reflect the statutory penalty criteria and factors set forth in Sections 3008(a)(3) and (g), and Section 9006(c) of RCRA, 42 U.S.C. § § 6928(a)(3) and (g), and 6991e(c), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19.

86. Payment of the civil penalty as required by paragraph 84, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by the Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2011-0238).

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

g. All payments made through the automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA No. 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

*Contact, Jesse White, 301-887-6548or REX, 1-866-234-5681*

h. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

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

i. Additional payment guidance is available at:

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

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

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

and

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

88. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

89. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

90. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

91. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that

remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

92. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

## V. CERTIFICATIONS

93. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the authorized WVHWMR and of RCRA Subtitle C and I, 42 U.S.C. §§ 6921-6939e, and 42 U.S.C. §§6991-6991i, for which violations are alleged in this CA.

## VI. OTHER APPLICABLE LAWS

94. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

## VII. RESERVATION OF RIGHTS

95. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

## VIII. FULL AND FINAL SATISFACTION

96. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g), and and 9006(a), 42 U.S.C. § 6928(a) and (g), and 42 U.S.C. § 6991e(a)for the violations alleged in this CA.

## IX. PARTIES BOUND

97. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

## X. EFFECTIVE DATE

98. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

## XI. ENTIRE AGREEMENT

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

For Respondent: Appalachian Power Company

Date: 8/17/2011 By: _____

David D. Wickline
Plant Manager
John E. Amos Plant

For the Complainant: U.S. Environmental Protection Agency, Region III

Date: 8/30/2011 By: _____

Louis F. Ramalho
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached FO.

Date: 9/7/11 By: _____

Abraham Ferdas, Director
Land and Chemicals Division

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

| | | |
|---|---|---|
| **In the Matter of:** | : | |
| | : | |
| **Appalachian Power Company** | : | |
| **d/b/a American Electric Power** | : | **U.S. EPA Docket Number** |
| **1 Riverside Plaza** | : | **RCRA-03-2011-0238** |
| **Columbus, OH 43215** | : | |
| | : | |
| **Respondent,** | : | |
| | : | |
| | : | |
| **American Electric Power** | : | |
| **John E. Amos Plant** | : | |
| **1530 Winfield Road** | : | |
| **Winfield, WV 25213** | : | |
| | : | |
| **Facility.** | : | |
| | : | |



## FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Appalachian Power Company, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the *Consolidated Rules*

*of Practice* and Sections 3008(a) and (g), and 9006(a) and (d) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928(a) and (g) and 6991e(a) and (d) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Sections 3008(a)(3) and 9006(c), 42 U.S.C. §§ 6928(a)(3) and 6991c(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Forty Eight Thousand Six Hundred Twenty-Four Dollars ($48,624.00) in accordance with the terms and conditions of the Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/15/11

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

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2011-0238, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Kevin D. Mack
AEP Legal Department
29th Floor
1 Riverside Plaza
Columbus, Ohio 43215



Date: 9/19/2011

Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029