



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:  
LR-8J

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

Donald Sweatland, President  
Warsaw Chemical Company, Inc.  
390 Argonne Road  
Warsaw, Indiana 46580

Re: Consent Agreement and Final Order  
Warsaw Chemical Company, Inc.  
U.S. EPA ID: IND 005 430 244  
Docket No: **RCRA-05-2007-0017**

Dear Mr. Sweatland:

Please find enclosed one copy of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above-captioned case. The originals were filed on SEP 28, 2007 with the Regional Hearing Clerk (RHC). The agreement contains the terms previously discussed to resolve this matter.

Please pay the civil penalty in the amount of \$60,934 in the manner prescribed in paragraph 66 and Exhibit A of the CAFO, and reference all checks with the number BD 2750762R005 and docket number RCRA-05-2007-0017. Your first payment of \$20,311 is due December 30, 2007. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Willie H. Harris".

Willie H. Harris, P.E.  
Chief  
RCRA Branch  
Land and Chemicals Division

Enclosure

cc: Nancy Johnston, Indiana Department of Environmental Management (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
**Warsaw Chemical Company, Inc.** )  
**390 Argonne Road** )  
**Warsaw, Indiana 46580** )  
 )  
**U.S. EPA ID #: IND 005 430 244** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**Docket No.** RCRA-05-2007-0017

2007 OCT 28 PM 2:20  
REGIONAL COUNCIL CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant is the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (“U.S. EPA” or “the Agency”).

Respondent is Warsaw Chemical Company, Inc. (“Warsaw Chemical”).

Complainant and Respondent (“the Parties”) have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Therefore, Complainant and Respondent have agreed to a settlement of this action before the filing of a complaint, and thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”). 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

NOW, THEREFORE, based upon this pleading, before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the

Parties, it is hereby Ordered as follows:

### **I. PRELIMINARY STATEMENT AND JURISDICTION**

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA).
2. This action is also instituted pursuant to Sections 22.1(a)(4), 22.13, 22.14 and 22.37 of 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” (“Consolidated Rules”), 40 C.F.R. Part 22.
3. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.
4. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
5. Respondent is Warsaw Chemical, which is and was at all times relevant to this Complaint a corporation incorporated under the laws of the State of Indiana.
6. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), U.S. EPA has provided notice of commencement of this action to the Indiana Department of Environmental Management.

## **II. STATUTORY AND REGULATORY PROVISIONS APPLICABLE TO RESPONDENT AND RESPONDENT'S OPERATION**

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e), or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and the issuance of compliance orders under Section 3008 of RCRA, 42 U.S.C. § 6928.
8. Under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3953 (January 31, 1986). The Administrator of U.S. EPA granted Indiana final authorization to administer certain HSWA and additional RCRA requirements effective January 19, 1988, 53 Fed. Reg. 128 (January 5, 1988); September 11, 1989, 54 Fed. Reg. 29557 (July 13, 1989); September 23, 1991, 56 Fed. Reg. 33717 (July 23, 1991); September 23, 1991, 56 Fed. Reg. 33866 (July 24, 1991); September 27, 1991, 56 Fed. Reg. 35831 (July 29, 1991); September 30, 1991, 56 Fed. Reg. 36010 (July 30, 1991); October 21, 1996, 61 Fed. Reg. 43018 (August 20, 1996); October 21, 1996, 61 Fed. Reg. 43009 (August 20, 1996); November 30, 1999, 64 Fed. Reg. 47692 (September 1, 1999); January 4, 2001, 66 Fed. Reg. 733 (January 4, 2001); December 6, 2001, 66 Fed. Reg. 63331 (December 6, 2001); October 29, 2004, effective October 29,

- 2004, 69 Fed. Reg. 63100 and on November 23, 2005, 70 Fed. Reg. 70740 (November 23, 2005). The U.S. EPA-authorized Indiana regulations are codified at 329 Indiana Administrative Code (IAC) Part 3.1-7-1 *et seq.* See also 40 C.F.R. § 272.700 *et seq.*
9. Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, directed U.S. EPA to promulgate regulations governing generators of hazardous waste and facilities that treat, store or dispose of hazardous waste, and governing the owners and operators of such facilities. Pursuant to Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, respectively governing generators of hazardous waste, and facilities that treat, store or dispose of hazardous waste, and governing the owners and operators of such facilities. The federally-authorized Indiana regulations that govern generators of hazardous waste are codified at 329 IAC § 3.1-7-1 *et seq.* The federally-authorized Indiana regulations that govern facilities that treat, store or dispose of hazardous waste, and that govern the owners and operators of such facilities, are codified at 329 IAC §§ 3.1-9-1, 3.1-9-2(1) and (2) (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), and 329 IAC §§ 3.1-10-1, 3.1-10-2(1), (2) and (3) (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities).
10. Section 3005 of RCRA, 42 U.S.C. § 6925, directed U.S. EPA to promulgate regulations prohibiting the treatment, storage, or disposal of hazardous waste except in accordance with a permit, and requiring each person owning or operating a facility at which hazardous waste is treated, stored or disposed (TSD facility) to have a permit issued by U.S. EPA or the authorized state, or to have interim status under Section 3005(e) or

RCRA, 42 U.S.C. § 6925(e).

11. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), U.S. EPA has promulgated regulations at 40 C.F.R. Part 270 that establish permitting requirements and procedures.
12. The federally-authorized Indiana regulations that govern (in lieu of analogous federal regulations) the issuance of hazardous waste permits are codified at 329 IAC §§ 3.1-9-1, 3.1-9-2(1) and (2).
13. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e) includes a provision for “interim status” which allows TSD facilities to operate in certain circumstances pending receipt of a permit. U.S. EPA promulgated standards at 40 C.F.R. Part 265 that are applicable to facilities subject to interim status requirements. The federally-authorized Indiana regulations that govern the interim status standards for owners and operators of hazardous waste TSD facilities (in lieu of analogous federal regulations) are codified at 329 IAC §§ 3.1-10-1, 3.1-10-2(1), (2) and (3).
14. Facilities that treat, store, or dispose of hazardous waste must obtain either a permit or interim status pursuant to 329 IAC Sections 3.1-13-1, 3.1-13-2(1), (2), (3) and (4), 3.1-13-3 through 3.1-13-17, and 40 C.F.R. § 270.1, and Sections 3005 and 3006 of RCRA, 42 U.S.C. §§ 6925-6926.
15. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides U.S. EPA with the authority to enforce State regulations in those States authorized to administer a hazardous waste program.
16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

17. The Indiana regulations at 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10 define the term “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in 35 IAC §§ 3.1-6-1 and 3.1-6-2 or whose act first causes a hazardous waste to become subject to regulation.
18. 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10 define the term “facility” as, *inter alia*, all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.
19. 329 IAC § 3.1-1-1 and 40 C.F.R. § 261.2 define the term “solid waste” as any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded by variance granted under 40 C.F.R. §§ 260.30 and 260.31.
20. Under 40 C.F.R. § 261.3 and 35 IAC § 3.1-6-1, a solid waste is a hazardous waste if, *inter alia*, (1) it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and (2) it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, §§ 261.20 to 261.24 (i.e., the characteristics of ignitability, corrosivity, reactivity, or toxicity), or it is listed under 40 C.F.R. Part 261, subpart D, and has not been excluded from the lists in subpart D by virtue of 40 C.F.R. §§ 260.20 and 260.22.
21. Any violation of regulations promulgated pursuant to Subtitle C, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6039, or of any State regulations approved by U.S. EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6912, constitutes a violation of RCRA, subject to the assessment of civil or criminal penalties and compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

### **III. COMPLAINANT'S FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

22. Warsaw Chemical owns and operates a facility located at 390 Argonne Road, Warsaw, Indiana (hereinafter referred to as "the Warsaw Chemical facility"), with operations that include the manufacture of organic chemicals and soap and cleaning compounds.
23. The Warsaw Chemical facility has been in operation since at least December 20, 1980.
24. Respondent Warsaw Chemical is, and was at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Indiana.
25. Respondent is a "person" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) [40 C.F.R. 260.10], and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
26. Respondent Warsaw Chemical is, and was at all times relevant to this Complaint, the owner and operator of a "facility" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10, which is located at 390 Argonne Road, in Warsaw, Indiana.
27. Respondent Warsaw Chemical is, and was at all times relevant to this Complaint, a "generator" of hazardous waste as defined in 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10.
28. During calendar year 2006, the hazardous waste generated by Warsaw Chemical included a flammable hazardous waste with the hazardous waste code "D001," and a corrosive hazardous waste with the hazardous waste code "D002."
29. The hazardous wastes identified in paragraph 28, above, consisted of solvents used in a silk-screening operation as well as un-workable solvents and acids from a blending operation.
30. Respondent Warsaw Chemical currently generates more than 1,000 kilograms of



hazardous waste per month.

31. Respondent Warsaw Chemical is, and was at all times relevant to this Complaint, a “large quantity generator” of hazardous wastes within the meaning of 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) [40 C.F.R. § 260.10 and 40 C.F.R. § 262.34].
32. As a large quantity generator of hazardous wastes, Respondent Warsaw Chemical is, and was at all times relevant to this Complaint, subject to, *inter alia*, the requirements set forth in 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34]; 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.35]; 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.52(c), (d), (e), (f); and 40 CFR § 265.53]; 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.16(a)(3), (b), (c) and (d)(1) and (d)(2)]; 329 IAC §§ 3.1-7-1; 40 CFR § 265.174]; 329 IAC §§ 3.1-7-1; 3.1-10-1 [40 CFR § 262.34(a)(2) and (a)(3)]; 329 IAC § 3.1-7-1 [40 CFR § 262.34(c)(1)(ii)]; and 329 IAC § 3.1-7-1 [40 CFR § 262.34(c)(1)(i); 40 CFR § 265.173(a)].
33. Under 329 IAC §§ 3.1-13-1, 3.1-13-2(1), (2), (3) and (4), 3.1-13-3 through 3.1-13-17 [40 CFR §§ 270.1(c) and 270.13], a generator, including a large quantity generator, must apply for and obtain a hazardous waste storage permit if the generator fails to meet the requirements for permit exemptions.
34. On June 8, 2006, a U.S. EPA Inspector conducted an inspection at the Warsaw Chemical facility.

Failure to maintain aisle space

35. Under 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.35], a generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of

facility operation in an emergency.

36. During the June 8, 2006 inspection, U.S. EPA observed that Warsaw Chemical was storing flammable hazardous waste in 55-gallon containers.
37. During the June 8, 2006 inspection, U.S. EPA observed approximately fifty-one 55-gallon containers, of flammable hazardous waste, being stored without maintaining aisle space sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.

Failure to Mark Each Hazardous Waste Container

38. Under 329 IAC §§ 3.1-7-1; 3.1-10-1 [40 CFR § 262.34(a)(2) and (a)(3)], a generator of hazardous waste must ensure that the date, upon which each period of accumulation begins, is clearly marked and visible for inspection on each container of hazardous waste, and while being accumulated on-site, each container of hazardous waste must be labeled or marked clearly with the words, "Hazardous Waste."
39. During the June 8, 2006 inspection, U.S. EPA observed approximately fifty-one 55-gallon containers, of flammable hazardous waste, being stored without a date, upon which each period of accumulation began, clearly marked and visible on each container of hazardous waste.
40. During the June 8, 2006 inspection, U.S. EPA observed approximately fifty-one 55-gallon containers, of flammable hazardous waste, being stored without the words, "Hazardous Waste," labeled or clearly marked on the containers.

Failure to Mark Satellite Containers

41. Under IAC § 3.1-7-1 [40 CFR § 262.34(c)(1)(ii)], a generator of hazardous waste may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous

waste in containers at or near the point of generation which is under the control of an operator of the process generating the waste, provided that all containers holding hazardous waste and being stored in satellite accumulation areas are labeled with either the words, "Hazardous Waste," or with other words that identify the contents of the containers.

42. During the June 8, 2006 inspection, U.S. EPA observed several containers, of flammable hazardous waste, being stored in areas at or near the points of generation under the control of an operator of the process generating the wastes, that were not marked with either the words, "Hazardous Waste," or with other words identifying the contents of the containers.

Failure to Keep Satellite Containers Closed

43. Under 329 IAC § 3.1-7-1 [40 CFR § 262.34(c)(1)(i); 40 CFR § 265.173(a)], a generator of hazardous waste may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near the point of generation which is under the control of an operator of the process generating the waste, provided that the container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
44. During the June 8, 2006 inspection, U.S. EPA observed several containers, of flammable hazardous waste, being stored in areas at or near the points of generation that were under the control of an operator of the process generating the wastes, that were not closed at a time when waste was not being added to or removed from the containers.

Failure to Have an Adequate Contingency Plan

45. Under 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.52(c), (d), (e), (f); and

40 CFR § 265.53], a generator of hazardous waste must meet all of the requirements of the contingency plan as required in Subpart D (contingency plan and emergency procedures) in 40 CFR Part 265.

46. At the time of the June 8, 2006 inspection, Warsaw Chemical's contingency plan did not describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams; did not include the emergency contacts' home addresses within the plan; did not include the description, capability and location of all emergency equipment within the contingency plan; and did not describe alternate evacuation routes.
47. During the June 8, 2006 inspection, Warsaw Chemical's contingency plan had not been submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams.

Failure to Have an Adequate Training Program and Documentation of Such Program

48. Under 329 IAC § 3.1-10-1 [40 CFR § 262.34(a)(4); 40 CFR § 265.16(a)(3), (b), (c) and (d)(1) and (d)(2)], a generator of hazardous waste must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance.
49. During the June 8, 2006 inspection, Warsaw Chemical did not have an adequate training program because Warsaw Chemical's training program was not designed to completely ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including; procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; communications or alarm systems; response to fire

or explosion; response to groundwater contamination incidents; and shutdown of operations.

50. During the June 8, 2006 inspection, Warsaw Chemical's training program did not include documentation showing that new employees complete the training program within six months of the date of employment or assignment to a position requiring them to manage hazardous waste and did not include documentation that facility personnel take part in an annual review of the initial training required.
51. During the June 8, 2006 inspection, U.S. EPA observed that Warsaw Chemical did not include job titles and job descriptions within the training documents.

Failure to Obtain a Permit or Have Interim Status for the Treatment, Storage or Disposal of Hazardous Waste

52. As a consequence of Respondent's failure to comply with the conditions for a permit exemption set forth in 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34(a)], Respondent was required to obtain a permit for the treatment, storage or disposal of hazardous waste or have interim status under Section 3005 of RCRA, 42 U.S.C. § 6925.
53. At the time of the June 8, 2006 inspection of the Warsaw Chemical facility, Respondent did not have interim status under Section 3005 of RCRA, 42 U.S.C. § 6925.
54. Respondent does not currently have interim status under Section 3005 of RCRA, 42 U.S.C. § 6925.
55. Respondent has never had interim status under Section 3005 of RCRA, 42 U.S.C. § 6925.
56. Respondent has never applied for a permit for the treatment, storage or disposal of hazardous waste under Section 3005 of RCRA, 42 U.S.C. § 6925.
57. Respondent has never obtained a permit for the treatment, storage or disposal of

hazardous waste under Section 3005 of RCRA, 42 U.S.C. § 6925.

58. Therefore, Respondent stored or disposed of hazardous waste at the Warsaw Chemical facility without a permit or interim status, in violation of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a),(e), and the regulations at 329 IAC §§§ 3.1-13-1, 3.1-13-2(6) and 3.1-13-3 [40 C.F.R. § 270.10].
59. Respondent's violations of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and the regulations at 329 IAC §§§ 3.1-13-1, 3.1-13-2(6) and 3.1-13-3 [40 C.F.R. § 270.10] subject Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

#### **IV. TERMS OF SETTLEMENT**

60. Complainant and Respondent have agreed that this matter should be settled without resorting to a hearing or further proceedings, upon the terms set forth in this CAFO.
61. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.
62. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter alleged in this CAFO, and that the CAFO states a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations set forth above, consents to the terms of this CAFO.

63. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.
64. Under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements” in assessing a civil penalty. In enforcement actions brought under RCRA, proposed penalties are determined by reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy. This policy provides a consistent method of applying the statutory penalty factors to the specific facts of a case.
65. Complainant has determined an appropriate civil penalty in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928, after considering the facts and circumstances of this case with specific reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy.

**Penalty To Be Paid in Settlement.**

66. Based on an analysis of the applicable statutory penalty factors, as well as the penalty policy factors, including but not limited to, the nature and seriousness of the violations alleged in this CAFO, the potential harm to human health and the environment, Respondent’s willfulness/negligence or lack thereof, Respondent’s compliance history, the ability of Respondent to pay penalties, information exchanged by the parties, Respondent’s good faith efforts to comply, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty is the amount of **sixty thousand nine hundred and thirty four dollars (\$60,934)** to resolve the claims of this CAFO. Respondent shall pay the civil penalty in three installments, plus interest at a rate of 4% per annum, on the dates and in the amounts shown on the payment schedule attached as Exhibit A. Respondent may prepay the civil penalty of **sixty thousand nine hundred**

**and thirty four dollars (\$60,934)** plus accrued interest to date of such payment without being subjected to a prepayment penalty. Each payment shall be made by cashier's or certified check, paid to the order of the "Treasurer, United States of America," and sent to:

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

Respondent shall provide a copy of the check to:

Regional Hearing Clerk  
Mail Code E-13J  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Jamie L. Paulin  
Compliance Section 1  
RCRA Branch  
Land and Chemicals Division  
Mail Code LR-8J  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

and

Randa Bishlawi  
Associate Regional Counsel  
Office of Regional Counsel  
Mail Code C-14J  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Respondent shall designate on the face of each check the name and docket number of this action.

67. The civil penalty above shall **not** be deductible for purposes of federal taxes.



68. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.
69. Pursuant to 31 U.S.C. § 3717, the U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of four (4) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).
70. Respondent certifies that, to the best of its knowledge and belief, it is in compliance with the requirements of RCRA, 42 U.S.C. §§ 6901 *et seq.* Respondent understands that these requirements include, but are not limited to, the following:
- a. A generator of hazardous waste may not treat, store, or dispose of hazardous waste at its facility without either complying with applicable provisions of 329 IAC §§ 3.1-13-1, 3.1-13-2(6) [40 C.F.R. § 262.34(a)], or obtaining interim status, or obtaining a RCRA permit, except as otherwise provided for in applicable regulations.

71. 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.
72. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to issue such orders or to seek such injunctive relief as U.S. EPA deems necessary to protect human health or the environment, nor shall anything in this CAFO be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to take appropriate actions to address conditions that may present an imminent and substantial endangerment to human health or the environment. Nothing in this CAFO is intended to operate in any way to resolve any criminal liability of the Respondent, nor shall anything in this CAFO be construed to operate in any way to resolve any criminal liability of the Respondent.
73. The effective date of this CAFO shall be the date on which this CAFO is filed with the Regional Hearing Clerk, Region 5, U.S. EPA.
74. This CAFO shall terminate thirty (30) days after Respondent's compliance with all of the terms and conditions set forth herein.
75. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this

CAFO and to execute and legally bind that party to it.

76. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.
77. This CAFO constitutes the entire agreement between the parties.
78. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501, et seq.
79. This CAFO constitutes a Final Order pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
80. Each undersigned representative of a Party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such Party to this document.

Agreed to this 20 day of Sept, 2007.

By: Donald A. Sweatland  
Donald Sweatland  
President  
Warsaw Chemical Company Inc.  
Respondent


Agreed to this 26<sup>th</sup> day of September, 2007.

By: Margaret M. Guerriero  
Margaret M. Guerriero, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region 5  
Complainant  
**RCRA-05-2007-0017**

**Consent Agreement and Final Order**  
**In the Matter of Warsaw Chemical, Inc.**  
**Docket No. RCRA-05-2007-0017**

**V. ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with all of the terms and conditions of the Consent Agreement, effective immediately.

By:   
\_\_\_\_\_  
Mary A. Gade, Regional Administrator  
U.S. Environmental Protection Agency, Region 5

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**Exhibit A**

Principal Sum = \$60,934.00

<u>Payment</u>	<u>Principal</u>	<u>Remaining</u>	<u>Interest</u>	<u>Total</u>
12/30/07	\$20,311.33	\$40,622.67	0	\$20,311
12/30/08	\$20,311.33	\$20,311.34	\$1,624.89	\$21,936
12/30/09	\$20,311.33	0	\$812.45	\$21,124

**CASE NAME:** Warsaw Chemical Company, Inc.  
**DOCKET NO:** RCRA-05-2007-0017

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Donald Sweatland, President  
Warsaw Chemical Company, Inc.  
390 Argonne Road  
Warsaw, Indiana 46580

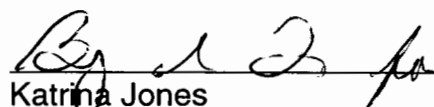
Return Receipt # 7001 0320 0506 1448 8331

9/28/07  
BJ

And via First Class Mail to:

Nancy Johnston, Chief, Hazardous Waste Enforcement  
Section  
Office of Enforcement  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204-2273

Dated: 9/28/2007

  
\_\_\_\_\_  
Katrina Jones  
Administrative Program Assistant  
United States Environmental Protection Agency  
Land and Chemicals Division -RCRA Branch  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590  
(312) 353-5882

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