



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

FEB 07 2017

REPLY TO THE ATTENTION OF:

Mr. Andy Alberti
General Manager
Indianapolis Service Center
6911 West Pierson Avenue
Indianapolis, Indiana 46241

Re: Consent Agreement and Final Order
Textron Aviation, Inc.
Docket No: **RCRA-05-2017-0006**

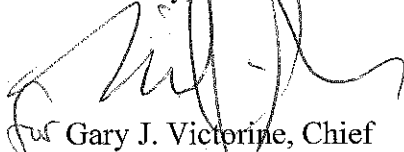
Dear Mr. Alberti:

Enclosed please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on February 7, 2017, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$20,175 in the manner prescribed in paragraph 99 of the CAFO, and reference your payment with the name "In the Matter of Textron Aviation, Inc." and the docket number RCRA-05-2017-0006. Your payment is due within 30 calendar days of the effective date of the CAFO. 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.

If you have any questions regarding this matter, please contact Daniel Chachakis, of my staff, at (312) 886-9871 or chachakis.daniel@epa.gov, or have your attorney contact Kevin Chow, Office of Regional Counsel, at (312) 353-6181 or kevin.chow@epa.gov.

Sincerely,


for Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Nancy Johnson, IDEM, njohnson@idem.in.gov (w/CAFO)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2017-0006
)	
Textron Aviation, Inc.)	Proceeding to Commence and Conclude
Indianapolis, Indiana)	an Action to Assess a Civil Penalty
U.S. EPA ID No. INR000127159)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Textron Aviation, Inc. (Textron Aviation) located in Indianapolis, Indiana, a corporation doing business in the State of Indiana.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. 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 any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to 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).

15. 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.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

17. Respondent was and is a “person” as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), and 40 C.F.R. § 260.10.

18. Respondent is an “owner” or “operator,” as those terms are defined under 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10, of a facility located at 6911 West Pierson Drive, Indianapolis, Indiana 46241 (Facility). The Facility is at or adjacent to the Indianapolis International Airport. The Facility is also known as the “Hawker Beechcraft Services Indianapolis” or “HBS Indianapolis” facility.

19. At all times relevant to this CAFO, Respondent’s Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

20. Respondent’s Facility is a “facility,” as that term is defined under 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10.

21. At all times relevant to this CAFO, Respondent maintained, repaired and modified airframes, power plants, and avionics systems, activities which included fuel removal, paint removal and paint application operations.

22. The acts of removing fuel, and removing and applying paints, generated solvent and sludge waste, which Respondent collected in containers and totes and stored in the hazardous waste storage areas of the Facility.

23. At all times relevant to this CAFO, Respondent had an out-of-service hazardous waste storage tank that Respondent was preparing for disposal at the time of U.S. EPA’s inspection of the Facility.

24. At the time of U.S. EPA's inspection, hazardous waste was still inside the out-of-service hazardous waste storage tank referred to in paragraph 23 above.

25. At all times relevant to this CAFO, Respondent held F005 and D007 spent halogenated solvent Chromium hazardous waste, a discarded material, for temporary periods in totes or containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

26. At all times relevant to this CAFO, Respondent held D001, D035 and F005 ignitable, methyl ethyl ketone (MEK), and spent halogenated solvent MEK hazardous waste, a discarded material, for temporary periods in totes, containers or a tank before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

27. At all times relevant to this CAFO, Respondent held D001, D035 and F005 ignitable, methyl ethyl ketone, and spent halogenated solvent Waste Paint Related Material hazardous waste, a discarded material, for temporary periods in totes or containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

28. Respondent stored, transported, disposed of, or otherwise handled its hazardous wastes referred to in paragraphs 25 through 27 in containers and tanks as that term is defined under 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) and 40 C.F.R. § 260.10.

29. At all times relevant to this CAFO, Respondent's hazardous wastes referred to in paragraphs 25 through 27 were a "solid waste" as that term is defined under 329 IAC §§ 3.1-6-1 and 3.1-6-2(2), and 40 C.F.R. § 261.2.

30. At all times relevant to this CAFO, Respondent's hazardous wastes referred to in paragraphs 25 through 27 were a "hazardous waste" as that term is defined under 329 IAC §§ 3.1-6-1, and 40 C.F.R. § 261.3.

31. At all times relevant to this CAFO, Respondent's holding of the hazardous wastes referred to in paragraphs 25 through 27 in containers, totes or tank constituted hazardous waste "storage," as that term is defined under 329 IAC §§ 3.1-6-1 and 3.1-6-2(3), and 40 C.F.R. § 260.10.

32. Respondent is a "generator," as that term is defined under 329 IAC §§ 3.1-6-1 and 3.1-6-2(3), and 40 C.F.R. § 260.10.

33. Hazardous waste was generated and managed at the Facility on November 19, 1980.

34. On August 13, 2012, the Indiana Department of Environmental Management (IDEM) conducted a Compliance Evaluation Inspection of the Facility (IDEM inspection).

35. On August 15, 2012, IDEM issued a Violation Letter for the Facility alleging a certain violation of RCRA discovered during the IDEM inspection.

36. Respondent acquired ownership of the Facility in March, 2014.

37. On August 6, 2015, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (U.S. EPA inspection).

38. On December 15, 2015, Respondent submitted to U.S. EPA written information in response to the U.S. EPA Inspection.

39. On January 6, 2016, U.S. EPA issued a Notice of Violation (U.S. EPA NOV) to Respondent alleging certain violations of RCRA discovered during the U.S. EPA inspection.

40. On January 29, 2016, Respondent submitted to U.S. EPA written information in response to the U.S. EPA NOV.

41. On July 29, 2016, U.S. EPA issued an opportunity to confer letter to Respondent.
42. On September 1, 2016, in response to the opportunity to confer letter referred to in paragraph 41, Respondent and U.S. EPA met and Respondent provided additional information to U.S. EPA.
43. On December 1, 2016, Respondent provided a SEP proposal to U.S. EPA.
44. At all times relevant to this CAFO, the State of Indiana had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.
45. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.
46. At all times relevant to this CAFO, Respondent was a large quantity generator of hazardous waste.
47. At all times relevant to this CAFO, Respondent generated during each calendar month more than 1000 kilograms (kg) of hazardous waste at the Facility.
48. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.
49. Pursuant to 329 IAC 3.1-7-1 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 329 IAC 3.1-7-1 and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in 329 IAC 3.1-9-1 and 3.1-10-1, and 40 C.F.R. § 264.1(b).

50. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 329 IAC 3.1-9-1 and 3.1-10-1, and the permit requirements of 329 IAC §§ 3.1-13-1, 3.1-13-2(1), (2), (3), (4), and 3.1-13-3 through 3.1-13-17, unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

51. At all times relevant to this CAFO, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

52. Similarly, the failure to comply with any of the conditions of 329 IAC 3.1-7-1 subjects the generator of hazardous waste to the requirements of 329 IAC 3.1-9-1 and 3.1-10-1 and the permit requirements of 329 IAC §§ 3.1-13-1, 3.1-13-2(1), (2), (3), (4), and 3.1-13-3 through 3.1-13-17.

Count 1: Storage of Hazardous Waste Over 90 Days

53. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

54. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must accumulate hazardous waste on-site for 90 days or less without a permit or interim status unless the generator has been granted an extension of the 90-day period. *See* 329 IAC 3.1-1-7 and 40 C.F.R. § 262.34(a).

55. At the time of the U.S. EPA inspection, Respondent stored one 55-gallon drum container of Paint Waste D001 Ignitability / F005 Spent Solvent(s) hazardous waste in the Main Building's less-than-90-day hazardous waste storage area with an accumulation date greater than 90 days.

56. The container referred to in paragraph 55 was marked with the accumulation start date of “5/2/15.” The date of the U.S. EPA inspection was August 6, 2015. Therefore, the total time of storage at the time of the U.S. EPA inspection was 97 days.

57. In Respondent’s January 29, 2016 response to the U.S. EPA NOV, Respondent stated that, “The waste drum was immediately scheduled for pick up and was removed by the waste disposal company that collects hazardous waste for HBS Indianapolis.”

**Count 2: Using a Pit as Hazardous Waste Storage Tank
without Professional Engineer Certification**

58. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

59. In order for a generator of hazardous waste that owns or operates a hazardous waste tank system to maintain its exemption from the requirement to have an operating permit or interim status, the generator must obtain a written assessment, reviewed and certified by an independent registered Professional Engineer, attesting that the system has sufficient structural integrity and is acceptable for storing hazardous waste. *See* 329 IAC 3.1-1-7 and 329 IAC 3.1-10-1, and 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.192(a).

60. At the time of the U.S. EPA inspection, Respondent did not have a written hazardous waste tank assessment for its pit in Hangar Building 137 that was being used as a hazardous waste storage tank containing D007 Chromium hazardous waste.

61. In Respondent’s January 29, 2016 response to the U.S. EPA NOV, Respondent stated that, “At the time of this response, an independent licensed engineer is being engaged to provide an assessment of the pit in Hanger Building 137. At this time, we have changed the process to empty this pit after each job and this pit will only be used as a conveyance of the

D007 hazardous waste to the storage totes to be scheduled for pickup by the waste disposal company that collects the hazardous waste for HBS Indianapolis.”

Count 3: Lack of Accumulation Start Dates for Containers and a Tank

62. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

63. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must clearly mark each container holding hazardous waste with the date upon which each period of accumulation begins.

See 329 IAC 3.1-1-7 and 40 C.F.R. § 262.34(a)(2).

64. At the time of the IDEM inspection, the Facility stored one 55-gallon container in the Main Building’s less-than-90-day hazardous waste storage area containing D001 Ignitability and other characteristic hazardous wastes that was not marked with the date upon which the period of accumulation of hazardous waste began.

65. The violation referred to in paragraph 64 was resolved on the day of the IDEM inspection.

66. At the time of the U.S. EPA inspection, Respondent stored six 55-gallon containers in the Main Building’s less-than-90-day hazardous waste storage area containing D001 Ignitability and other characteristic hazardous wastes that were not marked with the date upon which each period of accumulation of hazardous waste began, and one additional container of D001 Ignitability and other characteristic hazardous wastes that was marked with an incomplete date of, “2-5.” Also, Respondent stored one container of Chromium (D007) and spent non-halogenated solvents (F005) hazardous waste that was not marked with the date upon which the period of accumulation of hazardous waste began.

67. With regard to the containers referred to in paragraph 66, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "Since the time of the inspection, all drums were corrected and have since been collected by the waste disposal company that collects hazardous waste at HBS Indianapolis."

68. At the time of the U.S. EPA inspection, Respondent stored a tote in Hangar Building 137 containing over 55 gallons of D007 Chromium hazardous waste that was not marked with the date upon which the period of accumulation of hazardous waste began.

69. With regard to the tote referred to in paragraph 68, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "When hazardous waste is placed in the totes in building 137, a dated hazardous waste label will be placed on the tote."

70. At the time of the U.S. EPA inspection, Respondent used a pit in Hangar Building 137 as a hazardous waste storage tank containing over 40 gallons of D007 Chromium hazardous waste that was not marked with the date upon which the period of accumulation of hazardous waste began.

71. With regard to the pit referred to in paragraph 70, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "In the future this pit will only be used as a conveyance and emptied immediately into the totes. The sump will not be used to store hazardous waste."

Count 4: Failure to Mark Containers and Tanks as "Hazardous Waste"

72. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

73. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must mark each container holding

hazardous waste with the words, "Hazardous Waste." *See* 329 IAC 3.1-1-7 and 40 C.F.R. § 262.34(a)(3)

74. At the time of the U.S. EPA inspection, Respondent stored one 55-gallon container in Hangar Building 137 containing D007 Chromium hazardous waste that was not marked or labeled with the words, "Hazardous Waste."

75. With regard to the container referred to in paragraph 74, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "Since the time of the inspection, all drums were corrected and drums have since been shipped to [the] waste disposal company that collects hazardous waste at HBS Indianapolis. The labeling requirements were reviewed with the employees."

76. At the time of the U.S. EPA inspection, Respondent used a pit in Hangar Building 137 as a hazardous waste storage tank containing over 40 gallons of D007 Chromium hazardous waste that was not marked or labeled with the words, "Hazardous Waste" at or near the tank.

77. With regard to the pit referred to in paragraph 76, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "In the future this pit will only be used as a conveyance and emptied immediately into the totes. The sump will not be used to store hazardous waste."

Count 5: Facility Maintenance and Operation

78. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

79. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must maintain and operate its facility in order 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. *See* 329 IAC 3.1-1-7 and 329 IAC 3.1-10-1, and 40 C.F.R. §§ 262.34(a)(4) and 265.31.

80. At the time of the U.S. EPA inspection, Respondent allowed dust consisting of D007 Chromium hazardous wastes or its constituents to remain on the floor of Hangar Building 137 that had the potential to be breathed in by workers, inspectors, and other personnel; tracked out of the Facility by workers shoes and equipment wheels; and blown out of the Facility by wind when the hanger doors are opened and closed.

81. At the time of the U.S. inspection, Respondent was unable to provide information on when the last time Hangar Building 137 was cleaned and the dust removed after operations.

82. With regard to the hangar referred to in paragraphs 80 and 81, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "Since the time of the inspection, HBS Indianapolis had reinstated a process where the floor and other surfaces are cleaned and dust removed by rinsing the material into the wastewater pit to be disposed of by conveyance of the water to the wastewater storage totes containing the same identified hazardous waste D007 Chromium hazardous waste. The cleaning and maintenance operation will be conducted immediately after the work producing the dust is completed."

83. At the time of the U.S. EPA inspection, Respondent was dismantling a hazardous waste storage tank in Hangar Building 137. This tank was open, and the tank's interior was still coated with D007 Chromium hazardous waste that was exposed to any worker or workers responsible for dismantling the tank.

84. With regard to the hazardous waste storage tank described in paragraph 83, Respondent's January 29, 2016 response to the U.S. EPA NOV states: "Since the inspection was

completed, HBS has disposed of the tank in Building 137 using our hazardous waste disposal company.”

Count 6: Training Program

85. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

86. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must maintain a written job description for each position at the facility related to hazardous waste management; a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management; and records that document the training. *See* 329 IAC 3.1-1-7 and 329 IAC 3.1-10-1, and 40 C.F.R. §§ 262.34(a)(4) and 265.16(d).

87. At the time of the U.S. EPA inspection, Respondent did not have, and was unable to provide in response to a request, a written description for the Attendant Line Service position related to hazardous waste management at the Facility.

88. At the time of the U.S. EPA inspection, Respondent did not have, and was unable to provide in response to a request, a written description of the type and amount of any introductory and continuing training Respondent had given to employees with duties related to hazardous waste management for the Attendant Line Service and Building Maintenance positions.

89. At the time of the U.S. EPA inspection, Respondent did not have, and was unable to provide in response to a request, records that documented the training.

90. Respondent addressed the training program violations in its December 21, 2015 response to the U.S. EPA inspection and its January 29, 2016 response to the U.S. EPA NOV.

Count 7: Contingency Plan

91. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

92. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must develop a contingency plan that includes a list of all emergency equipment at the facility that includes the location and a physical description of each item on the list, and a brief outline of its capabilities.

See 329 IAC 3.1-1-7 and 329 IAC 3.1-10-1, and 40 C.F.R. §§ 262.34(a)(4) and 265.52(e).

93. At the time of the U.S. EPA inspection, Respondent did not have, and was unable to provide in response to a request, an equipment list that included a list of all emergency equipment at the Facility that includes the location and a physical description of each item on the list, and a brief outline of its capabilities.

94. In Respondent's January 29, 2016 response to the U.S. EPA NOV, Respondent stated that, "The Contingency Plan has been updated to include a site map showing location of the emergency equipment available at the HBS location including an inventory list of the items on the site map with a description of capabilities."

95. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

96. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 329 IAC 3.1-7-1, and 40 C.F.R. § 262.34, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

97. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 329 IAC §§ 3.1-13-1,

3.1-13-2(1), (2), (3), (4), 3.1-13-3 through 3.1-13-17, and 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13.

Civil Penalty

98. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$20,175. In determining the penalty amount, Complainant took into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

99. Within 30 days after the effective date of this CAFO, Respondent must pay the \$20,175 civil penalty for the RCRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state "In the Matter of Textron Aviation, Inc." and the docket number of this CAFO.

100. This civil penalty is not deductible for federal tax purposes.

101. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 115, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

102. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

103. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by improving the existing aircraft sanding process through installation of new vacuum sanders to capture paint chips and dust at the point of generation in the aircraft sanding hangar. The SEP will reduce the amount of hazardous waste paint chips and dust from the air and floor of the hangar, and from wastewater.

104. At the Facility, Respondent must complete the SEP as follows: Award contracts; order and receive equipment including but not limited to vacuum and compressed air piping; and install in its aircraft sanding hangar vacuum sanders consisting of a 99.97% efficient High Efficiency Particulate Air (HEPA) filtration system that will capture paint chips and dust at the point of generation. Respondent shall complete installation of the equipment, and the equipment must be in operation, within 180 days of the effective date of this CAFO.

105. Respondent must spend at least \$49,782 to purchase and install the equipment.

106. Respondent must continuously use or operate the equipment installed as the SEP for a minimum of 5 years following its installation.

107. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this

CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

108. U.S. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

109. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

110. Respondent must submit a SEP completion report to U.S. EPA within 30 days after installation of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

111. Respondent must submit all notices and reports required by this CAFO by first class or overnight mail to Daniel Chachakis, of the RCRA Branch, at the following address:

Daniel Chachakis
RCRA Branch, LR-8J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

112. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

113. Following receipt of the SEP completion report described in paragraph 110, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 115.

114. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 115, below.

115. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 104, Respondent must pay a penalty of \$39,825.

- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 105, Respondent will not be liable for a stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 105, Respondent must pay a penalty of \$9,956.
- d. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 through 30 th day
\$500	31 st day and beyond

116. U.S. EPA’s determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

117. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraph 99, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

118. Any public statement that Respondent makes referring to the SEP must include the following language, “Textron Aviation, Inc. undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Textron Aviation, Inc. for violations of the Resource Conservation and Recovery Act (RCRA).”

119. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

120. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

121. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

122. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

123. Respondent's signature on this CAFO shall in no way be construed as an admission of liability for any conclusions of law alleged in this CAFO.

124. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

125. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

126. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

127. The terms of this CAFO bind Respondent, its successors, and assigns.

128. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

129. Each party agrees to bear its own costs and attorney's fees in this action.

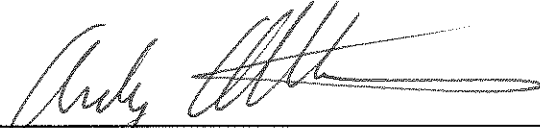
130. This CAFO constitutes the entire agreement between the parties.

131. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: chow.kevin@epa.gov (for Complainant), and JSchiff@textron.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

**Consent Agreement and Final Order
In the Matter of: Textron Aviation, Inc.**

Textron Aviation, Inc., Respondent

1/24/17
Date



Andy Alberti
General Manager
Textron Aviation, Inc.

**Consent Agreement and Final Order
In the Matter of: Textron Aviation, Inc.**

United States Environmental Protection Agency, Complainant

January 30, 2017
Date

Ignacio L. Arrázola
Acting Director
Land and Chemicals Division

In the Matter of:
Textron Aviation, Inc.
Docket No. RCRA-05-2017-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

February 23, 2017
Date

Ann Coyle
Ann Coyle
Regional Judicial Officer

Consent Agreement and Final Order
In the Matter of: Textron Aviation, Inc.
Docket No.: RCRA-05-2017-0006

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket No. RCRA-05-2017-0006, which was filed on February 7, 2017, in the following manner to the following addresses:

Copy by mail: Andy Alberti
General Manager
Indianapolis Service Center
6911 West Pierson Avenue
Indianapolis, Indiana 46241

Copy by e-mail to Attorney for Respondent: Jamieson Schiff
JSchiff@textron.com

Copy by e-mail to Attorney for Complainant: Kevin Chow
chow.kevin@epa.gov

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: February 7, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

Certified Mail Receipt Number: 7011 0320 0006 0188 0567