UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:	)	
	)	
Maintainer Corporation of Iowa	)	**CONSENT AGREEMENT**
	)	**AND FINAL ORDER**
Respondent	)	
	)	Docket No. RCRA-07-2013-0005
Proceeding under Sections 3008(a) and (g)	)	
of the Resource Conservation and	)	
Recovery Act as amended,	)	
42 U.S.C. § 6928(a) and (g)	)	

I. PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Maintainer Corporation of Iowa (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 Rules 22.13(b) and 22.18(b)(2) 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 of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice. This authority has been delegated by the Administrator of EPA to the Regional Administrator and further delegated to the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C § 6925, the standards for universal waste management (40 C.F.R. Part 273) and the requirement to make hazardous waste determinations (40 C.F.R. 262.11).

Parties

3. Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. Respondent is Maintainer Corporation of Iowa, authorized to operate under the laws of Iowa.

Statutory and Regulatory Framework

5. When the EPA determines that any person has violated or is in violation of any RCRA requirement, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than $25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to $32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to $37,500 per day are now authorized. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

7. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent's facility is located at 1701 S. 2nd Avenue, Sheldon, Iowa. Respondent manufactures service and lubrication bodies that are mounted on truck chassis. Respondent began operation at this location in 1985 and has operated as a small quantity generator since 1990. Respondent employs approximately 100 people.

9. At the time of the inspection, the following solid waste(s) were present:
   a. 2, 1-gallon containers of waste paint-related material (WPRM) in the paint booth accumulation area.
   b. 2, 55-gallon containers of WPRM in the paint kitchen accumulation area.
   c. 1, 55-gallon container of WPRM in the accumulation area around the facility's WPRM solvent recovery distillation unit (still).

10. At the time of the inspection, the following hazardous waste(s) were present:
    a. 2, 1-gallon containers of WPRM in the paint booth accumulation area, WPRM is a D001, D035, F003, and F005 listed hazardous waste.
    b. 2, 55-gallon containers of WPRM in the paint kitchen accumulation area, WPRM is a D001, D035, F003, and F005 listed hazardous waste.
    c. 1, 55-gallon container of WPRM in the accumulation area around the still, WPRM is a D001, D035, F003, and F005 listed hazardous waste.

11. At the time of the inspection, the following universal wastes were present:
    a. Multiple 4-foot and 8-foot fluorescent and high-intensity discharge (HID) lamps in the shop accumulation area were stored both loose and in open containers.

12. On or about December 12, 1990, Respondent notified the EPA that it is a small quantity generator of hazardous waste. Small quantity generators of hazardous waste generate more than 100 kilograms and less than 1,000 kilograms of hazardous waste per month.

13. Respondent has been assigned the following EPA ID Number: IAD984589945.

14. On or about August 24, 2011, the EPA conducted a RCRA Compliance Evaluation Inspection (hereinafter "the inspection") of the hazardous waste management practices at Respondent's facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Small Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and a used oil generator.

Violations

15. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Failure to Conduct Hazardous Waste Determination

16. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 14 above, as if fully set forth herein.

17. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

18. At the time of the inspection, it was determined that Respondent was generating the following solid waste stream: Still bottoms from the WPRM solvent recovery still.

19. Subsequent to the inspection, the still bottoms were determined to be D001, D035, F003, F005 hazardous waste.

20. At the time of the inspection, Respondent had not conducted hazardous waste determinations on the solid waste stream described in Paragraph 18 above.

21. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste stream is a violation of 40 C.F.R. § 262.11.

Count 2

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit

22. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 14 above, as if fully set forth herein.

Generator Requirements

23. The regulations at 40 C.F.R. § 262.34(d) state that a small quantity generator may accumulate waste for one hundred and eighty (180) days or less without a permit or interim status provided that the conditions listed therein are met. The regulations at 40 C.F.R. § 262.34(e) state that a small quantity generator which must transport its waste, or offer its waste for transportation, over a distance of 200 miles, may accumulate hazardous waste on site for two hundred and seventy (270) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(d) are met. If a generator fails to comply with any of these conditions, it is not allowed to store hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

Failure to close hazardous waste accumulation containers

24. The regulations at 40 C.F.R. § 262.34(d)(2) require that while hazardous waste is being accumulated on-site in containers, the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

25. Pursuant to 40 C.F.R. § 265.173(a), as found in 40 C.F.R. § 265 Subpart I, generators must close hazardous waste storage containers during storage.

26. At the time of the inspection, the following hazardous waste accumulation containers were open:

a. 2, 55-gallon accumulation drums of WPRM in the paint kitchen.
b. 1, 55-gallon accumulation drum of WPRM near the still.

Failure to date hazardous waste accumulation containers

27. The regulations at 40 C.F.R. § 262.34(a)(2), referenced in 40 C.F.R. § 262.34(d)(4), require generators to clearly mark the date upon which each period of accumulation began on each container.

28. At the time of the inspection, the following hazardous waste accumulation container was not marked with the date upon which accumulation began:

a. 1, 55-gallon accumulation container of WPRM in the paint kitchen.

Failure to label hazardous waste accumulation containers

29. The regulations at 40 C.F.R. § 262.34(a)(3), referenced in 40 C.F.R. § 262.34(d)(4), require generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

30. At the time of the inspection, the following hazardous waste accumulation container was not marked with the with the words "Hazardous Waste":

a. 1, 55-gallon accumulation container of WPRM in the paint kitchen.

Failure to post emergency information next to the telephone

31. Pursuant to 40 C.F.R. § 262.34(d)(5)(ii), the generator must post the following emergency information next to the telephone:

a. The name and telephone number of the emergency coordinator;
b. The location of fire extinguishers and spill control material, and, if present, fire alarm; and
c. The telephone of the fire department, unless the facility has a direct alarm.

32. At the time of the inspection, the list of phone numbers next to each phone at the facility did not provide emergency response information or contact information for the emergency coordinator, the location of fire and spill response equipment, or the phone number of the fire department.

Failure to have an emergency coordinator on premises or on call at all times

33. The regulations at 40 C.F.R. § 262.34(d)(5)(i), require the generator to have an emergency coordinator, an employee with the responsibility for coordinating all emergency response measures, either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time).

34. At the time of the inspection, the Respondent's facility failed to have an emergency coordinator that was able to reach the facility within a short period of time, was aware of his responsibilities, and was on the premises or on call.

Failure to provide a spill kit in container accumulation areas

35. The regulations at 40 C.F.R. § 262.34(d) require, in part, that the generator comply with the requirements of Subparts C in 40 C.F.R. Part 265 and with all applicable requirements under 40 C.F.R. § 268.

36. Pursuant to 40 C.F.R. § 265.32(c), found in Subpart C of 40 C.F.R. Part 265, the generator must be equipped with spill control equipment.

37. At the time of the inspection, Respondent's facility lacked required spill control equipment.

Satellite Accumulation

38. The regulations at 40 C.F.R. § 262.34(c)(1) allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where waste 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 § 262.34(a) or (d), provided the generator comply with various handling requirements. This type of accumulation is known as "satellite accumulation." At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

Failure to close satellite accumulation containers

39. The regulations at 40 C.F.R. § 262.34(c)(1)(i), referencing 40 C.F.R. § 265.173(a), allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

40. At the time of the inspection, the following satellite accumulation containers containing hazardous waste were open:

a. 2, 1-gallon satellite accumulation containers of WPRM in the paint booth.

Failure to label satellite accumulation containers

41. The regulations at 40 C.F.R. § 262.34(c)(1)(ii) allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the generator mark the containers either with the words, "Hazardous Waste," or with other words that identify the contents of the container.

42. At the time of the inspection, the following satellite accumulation containers containing hazardous waste were not marked with the words, "Hazardous Waste" or other words to identify the contents of the container:

a. 2, 1-gallon satellite accumulation containers of WPRM in the paint booth.

43. Because Respondent failed to comply with the satellite accumulation generator requirements as set forth in Paragraphs 38 through 42 above, Respondent was not authorized to store hazardous waste in satellite accumulation at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit.

Storage Over 270 Days

44. At the time of the inspection, Respondent had been storing the following containers of hazardous waste for more than 270 days:

a. 1, 55-gallon container of WPRM in the paint kitchen area.

45. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 23 through 37 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time without a permit.

46. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

47. Respondent's failure to obtain a hazardous waste storage permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 3

Failure to Comply with Universal Waste Management Requirements

48. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 14 above, as if fully set forth herein.

Failure to label universal waste containers

49. The regulations at 40 C.F.R. § 273.14(e), require small quantity handlers of universal waste to clearly label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: "Universal Waste—Lamp(s)" or "Waste Lamp(s)," or "Used Lamp(s)."

50. At the time of the inspection, the following lamps or containers were not properly labeled or marked:

a. One or more open containers containing 4-foot and 8-foot lamps.
b. Loose 4-foot and 8-foot lamps.

51. Respondent's failure to properly label the universal waste lamps or containers described above is a violation of 40 C.F.R. § 273.14(e).

Failure to date universal waste containers

52. The regulations at 40 C.F.R. § 273.15(c)(1), require small quantity handlers of universal waste to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

53. At the time of the inspection, Respondent failed to label the following with the earliest date that any universal waste became a waste or was received:

a. One or more open containers containing 4-foot and 8-foot lamps.
b. Loose 4-foot and 8-foot lamps.

54. Respondent's failure to label the universal waste containers described above with the earliest date that any universal waste became a waste or was received is a violation of 40 C.F.R. § 273.15(c)(1).

Failure to close universal waste containers

55. The regulations at 40 C.F.R. § 273.13(d)(1), require a small quantity handler of universal waste to manage lamps in a way that prevents releases by containing the lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

56. At the time of the inspection, Respondent failed to close the following containers, or otherwise to contain lamps to prevent releases and breakage:

a. One or more open containers containing 4-foot and 8-foot lamps.
b. Loose 4-foot and 8-foot lamps.

57. Respondent's failure to close the universal waste containers or packages described above to prevent releases and breakage is a violation of 40 C.F.R. § 273.13(d)(1).

Failure to inform employees on universal waste handling procedures

58. The regulations at 40 C.F.R. § 273.16, require a small quantity handler of universal waste to inform all employees who handle or have responsibility for managing universal waste of the proper handling and emergency procedures appropriate to the types of universal waste handled at the facility.

59. At the time of the inspection, the facility training program did not address the proper handing and emergency procedures appropriate to the universal waste handled at the facility.

60. Respondent's failure to inform employees who handle or manage universal waste of the proper handling and emergency procedures is a violation of 40 C.F.R. § 273.16.

Count 4

Failure to Prepare a Manifest and Failure to Complete an LDR Notice

61. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 14 above, as if fully set forth herein.

Failure to Prepare a Manifest

62. The regulations at 40 C.F.R. § 262.20(a)(1), requires a generator who offers for transport a hazardous waste for offsite treatment, storage, or disposal to prepare a manifest.

63. At the time of the inspection, Respondent was offering hazardous waste still bottoms to a transporter without a manifest.

64. Respondent's failure to prepare a manifest is a violation of 40 C.F.R. § 262.20(a)(1).

Failure to Complete a Land Disposal Restriction (LDR) Notice

65. The regulations at 40 C.F.R. § 268.7 require a generator of hazardous waste to determine if the waste has to be treated before it can be disposed, and then to provide a one-time notice referencing its determination to the TSDF receiving the waste, maintaining a copy of the notice in the facility's on-site files.

66. At the time of the inspection, Respondent was not making the required determination on its waste still bottoms. The still bottoms are a D001, D035, F003, and F005 hazardous waste.

67. The still bottoms were sent with the general trash to the Northern Plains Regional Landfill in Graettinger, Iowa, without the required determination and without providing the LDR notice to the receiving facility.

68. Respondent's failure to determine whether its waste still bottoms required treatment before it can be land disposed and to provide and retain an LDR notice for the still bottoms shipments to the receiving facility constitutes a violation of 40 C.F.R. § 268.7(a)(7).

CONSENT AGREEMENT

69. Respondent and the EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

70. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

71. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

72. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

73. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

74. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

75. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

76. The effect of settlement described in the preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the following paragraph, below, of this Consent Agreement and Final Order.

77. Respondent certifies that by signing this Consent Agreement and Final order that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

78. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

79. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Thirteen Thousand Three Hundred Sixty-Three ($13,363) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

80. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes,

81. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited in the immediately preceding paragraph.

Supplemental Environmental Project

82. In response to the violations of RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by RCRA or any other federal, state or local law, Respondent shall complete the Supplemental Environment Project (SEP) described in the immediately following two paragraphs, which the parties agree is intended to secure significant environmental or public health protection and improvement.

83. Respondent agrees to implement a SEP consisting of the purchase and installation of a paint mixing and metering system at its facility, as described in Attachment 1 to this CAFO, hereby incorporated by reference. This project will significantly reduce the facility's generation of hazardous solvent waste.

84. Respondent shall expend a minimum of $60,359 in approvable costs to perform the SEP. Respondent agrees to fully implement the SEP within a period of 120 days from the effective date of this Consent Agreement and Final Order. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Consent Agreement and Final Order.

85. Respondent shall submit a SEP Status Report to EPA six (6) months from the effective date of this Consent Agreement and Final Order. The Status Report shall provide the status of the project, along with any encountered problems and/or expected delays. The report shall also provide a reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved to date as a result of the project. To the extent that the project is implemented fully before the SEP Status Report is due and the SEP Completion Report described in the next paragraph has been submitted, the requirements of this paragraph will be deemed satisfied.

86. Within sixty (60) days after completion of the SEP, Respondent shall submit to EPA a SEP Completion Report, which shall contain the following information:

a. A detailed description of the SEP as implemented;

b. Documentation of all approvable costs incurred during the implementation of the SEP;

c. A reasonable estimate of the amount (in weight or volume) of pollution prevented and/or pollution reduction achieved as a result of the project;

d. A description of any problems encountered in implementation of the project and the solutions thereto;

e. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

f. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

87. In itemizing its costs in the SEP Status Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

88. The SEP Status Report and the SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

89. The SEP Status Report and/or the SEP Completion Report shall be submitted on or before the due date to:

Deborah Bredehoft, WEMM
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

90. Respondent agrees that failure to submit the SEP status report and the Final SEP Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 97, below.

91. After receipt of the SEP Completion Report described in paragraph 86 above, EPA will do one of the following:

a. Notify Respondent in writing of any deficiencies in the SEP Completion Report, in which case Respondent shall have an additional thirty (30) days to correct any deficiencies and resubmit the report;

b. Inform Respondent that the project has been completed in accordance with the requirements of this Consent Agreement and Final Order; or

c. Determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and notify Respondent.

92. If Respondent receives notice pursuant to paragraph 91.c., above that the SEP Completion Report is deficient, Respondent shall correct the deficiencies and resubmit the report within a thirty (30) day time period. If, upon resubmission, the deficiencies identified in the Final SEP Report have not been corrected, EPA reserves the right to determine that the project has not been completed in accordance with the requirements of this Consent Agreement and Final Order and to seek stipulated penalties pursuant to paragraph 97 below.

93. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

> This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et. seq.*

94. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times, to monitor Respondent's implementation of the SEP. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

95. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

96. Respondent agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for the purpose of federal, state, or local taxes.

97. Respondent agrees to the payment of stipulated penalties as follows:

a. In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 83 through 84 above, then pursuant to EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed $40,000. If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of the money required to be spent was expended on the SEP, then no stipulated

penalty is necessary.

b. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least $60,359 in approvable costs in performance of the SEP, stipulated penalties will be owed as follows:

   i. If Respondent spends less than twenty-five (25) percent of $60,359 in approvable costs, a stipulated penalty of $40,000 shall be paid to EPA;

   ii. If Respondent spends between twenty-five (25) and fifty (50) percent or less of $60,359 in approvable costs, a stipulated penalty of $30,000 shall be paid to EPA;

   iii. If Respondent spends between fifty-one (51) percent and seventy-five (75) percent of $60,359 in approvable costs, a stipulated penalty of $20,000 shall be paid to EPA;

   iv. If Respondent spends between seventy-five (75) percent and ninety (90) percent of $60,359 in approvable costs, a stipulated penalty of $10,000 shall be paid to EPA;

   v. If Respondent spends at least ninety (90) percent of $60,359 in approvable costs, no stipulated penalty is required.

c. In the event Respondent fails to timely submit the SEP status report required by paragraph 85 above or the Final SEP Report required by paragraph 86 above, Respondent shall pay a stipulated penalty of $500 per day for each day the report is overdue, until the report is finally submitted.

d. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA. Subject to EPA's discretionary review, Respondent may address requests for extensions of time to meet deadlines in this Consent Agreement for good cause shown to the EPA contact identified in Paragraph 9 of the Final Order.

e. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be made in accordance with the provisions of paragraph 2 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 98 of the Consent Agreement.

Late Payment Provisions

98. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, 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 or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). 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 six (6) 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. 31 C.F.R. §§ 901.9(c) and (d).

99. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Effective Date

100. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

101. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.

Reservation of Rights

102. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars ($37,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to Thirty-Seven Thousand Five Hundred Dollars ($37,500) per day are authorized for violations of Subchapter III of RCRA that occur after January 12, 2009.

103. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

104. Except as expressly provided herein, nothing in this Consent Agreement and Final

Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

105. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

106. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

107. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of Thirteen Thousand Three Hundred Sixty-Three Dollars ($13,363.00).

2. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line, as listed below. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:
www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Deborah Bredehoft, AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

5. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

6. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit documentation to the EPA, in accordance with Paragraph 7 below, demonstrating that an accurate hazardous waste determination has been performed for each solid waste stream generated at Respondent's facility. This documentation will include, but is not limited to, the following information:

a. A description of the waste stream which includes a detailed description of the process or processes that generated the waste;
b. A determination of whether or not the waste has been excluded from regulation under 40 CFR Part 261.4;

c. A determination of whether or not the waste has been listed as a hazardous waste in Subpart D of 40 CFR Part 261; and
d. A determination of whether or not the waste is identified in 40 CFR Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using one of the methods found in Subpart C of Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA.

7. Every ninety (90) days for one year following the Effective Date of this Consent Agreement and Final Order, Respondent shall provide legible copies of all hazardous waste manifests created during the preceding 90 days, specifically highlighting if the still bottoms are removed from its facility.

8. Within 30 days following the Effective Date of this Consent Agreement and Final Order, Respondent shall provide clear photographic documentation that the hazardous waste and universal waste containers at its facility are appropriately labeled, dated, and closed.

9. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraph 5-8 of this Final Order to the following address:

Deborah Bredehoft, AWMD/WEMM
Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

C. Parties Bound

10. The Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

8-15-13
Date

Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

8/15/13
Date

Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

For Respondent, Maintainer Corporation of Iowa

August 9, 2013
Date

Signature

Dennis J. Michels
Printed Name

President
Title

IT IS SO ORDERED. This Final Order shall become effective upon filing.

8-22-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

ATTACHMENT 1

Maintainer
P.O. BOX 349 1701 S. 2ND AVE. SHELDON, IA 51201
PH: 712-324-8125 TOLL FREE: 866-434-0457 FAX: 712-324-3526 www.maintainer.com

Proposed Supplemental Environmental Project (SEP)

Scope of Work

Project Overview. The current paint mixing and spray process generates over 70 pounds of paint waste daily[1]. The Solvent separation system, under the current process, handles 20 Quarts of dirty solvent each day[2] and generates approximately 1300 gallons of Solvent per year[3]. The proposed SEP is expected to reduce the total waste stream by 12.6%, including reducing waste paint by 216 gallons per year, and reducing residual waste products such as paint liners, mixing cups, measuring cups, and paint residue left over from the mixing and spraying process. Maintainer is currently building 30-40 trucks per month.

Project description. This project consists equipment to reduce or eliminate paint and solvent waste:

Plural mixing and metering system	$60,359.00

[1] 18300 lbs hazardous waste generated in 2012 according to shipping manifests divided by (52 weeks x 5 days per week).

[2] Interview of Dave Miller

[3] 5 gal. Per day X 260 days

Plural Mixing and metering:

Conversion of the current spray processes to a state-of-the- art precision mix system (ProMix 2KS -mix system See attached literature and quote). The ProMix 2KS is an automatic color change proportioning system. Benefits include:

- Fast color change with reduced waste.
- Automatic gun flushing system for accurate flushing and filling.
- Closed system - no outside contamination
- Efficient material Tracking & reporting

The system continuously mixes pre-selected ratios of resin and catalyst. It is fed from bulk paint containers and capable of making a color change in approximately 30 seconds. A color change is done automatically once the color change dial is turned, resulting in reduced set-up time and eliminating the handling of hazardous materials. The ProMix System detects potential problems: empty pressure pots, improper mix ratios and exceeded pot life have an audible and visual alarm warning system. The alarm notifies the painter who, in turn, stops the application. These systems all aid in the reduction of rework and waste of the product.

Demonstrative Waste reduction: The system eliminates the excess quantity of paint and primer that needs to be mixed to avoid running out midway through the application process. Instead of premixing the entire quantity of paint, the paint is mixed as it is applied. The only paint waste is the contents of the hose from the wall of the paint booth to the paint gun. The estimated amount of paint and primer waste saved is approximately 5.2% annually. See Appendix 1 for calculations).

An additional feature is the system purge for cleaning the equipment between colors and at the end of the day. This is set to obtain minimal solvent use. The purge is a series of air/solvent/air/solvent/air purges that thoroughly cleans all fluid lines. The painter simply sets their spray gun in a holder on the waste collection tank, turns the purge dial on and returns to a clean system when the process is complete. The amount of solvent used is reduced by approximately 2.52 quarts per day. (See appendix 2 for calculations)

On the supervisory level, the primary feature is the exact accountability of all material usage. The volatile organic compound (VOC) print-out will improve emissions tracking accuracy.

Cost Estimate: $60,359

IN THE MATTER OF Maintainer Corporation of Iowa, Respondent
Docket No. RCRA-07-2013-0005

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by First Class Mail to Respondent:

Shelly Morris, GM
Maintainer Corporation of Iowa, Inc.
1701 S. 2nd Avenue
Sheldon, Iowa 51201

Dated: 8/23/13

Kathy Robinson
Hearing Clerk, Region 7