

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

<b>In the Matter of:</b>	:	
	:	
<b>AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 2591 Mitchell Avenue Allentown, PA 18103</b>	:	<b>U.S. EPA Docket No. RCRA-03-2021-0064</b>
	:	
	:	<b>Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)</b>
	:	
<b>Respondent.</b>	:	
	:	
<b>AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company 2591 Mitchell Avenue Allentown, PA 18103</b>	:	
	:	
<b>Facility.</b>	:	

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into consent agreements to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant’s civil penalty claims against Respondent under the Resource Conservation and Recovery Act (“RCRA” or the “Act”) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter sent on August 1, 2019, EPA notified the Pennsylvania Department of Environmental Protection (“PADEP”) of EPA’s intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

### **GENERAL PROVISIONS**

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 10, below, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations were authorized by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The Commonwealth of Pennsylvania has revised, and EPA has re-authorized, the Commonwealth of Pennsylvania Hazardous Waste Regulations several times subsequent to this original authorization. The most recent authorized (revised) regulations became effective on June 29, 2009 (74 Fed. Reg. 19453). The provisions of the current authorized (revised) Commonwealth of Pennsylvania Hazardous Waste Management Regulations, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a (“PAHMWR”), have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
14. When EPA last authorized the Pennsylvania hazardous waste regulations on June 29, 2009, EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17.
15. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “generator” as any person whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.
16. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “owner” as the person who owns a facility or part of a facility.
17. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, define “operator” as the person responsible for the overall operation of a facility.
18. 25 Pa. Code § 260a.10 defines “person” as, *inter alia*, a corporation.

19. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “hazardous waste” as that term is defined in 40 C.F.R. § 261.3.
20. 25 Pa. Code § 260a.10 defines “facility” as “[t]he land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored, or disposed.”
21. Respondent is a corporation incorporated in the State of Delaware. Respondent is now, and was at the time of the violations alleged herein, a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.
22. Respondent’s facility is located at 2591 Mitchell Avenue, Allentown, PA 18103 (“Facility”), and is further described below.
23. Respondent’s Facility is a permitted treatment, storage and disposal (“TSD”) facility, for hazardous, universal and residual waste. The Facility specializes in the processing and recovery of mercury from objects that contain this element, including fluorescent lamps, mercury switches, thermostats, and chemical oxygen demand test vials. In addition, the Facility accepts and sorts for recycling universal waste batteries, fluorescent light ballasts and electronic wastes.
24. Respondent is a large quantity generator of hazardous waste at the Facility.
25. Respondent has a RCRA Part B permit for the treatment, storage and/or disposal of hazardous waste there. On August 19, 2006, PADEP issued permit number PAD987367216 (“RCRA Permit”) to AERC.com Inc., a subsidiary of Clean Earth. This RCRA Permit expired on August 19, 2016. Respondent sought renewal of this RCRA Permit from PADEP, and this Permit has been administratively extended.
26. On March 6-7, 2019, Respondent was the “operator” and the “owner” of a “facility,” described in Paragraph 24, as the term “facility” is defined in 25 Pa. Code § 260a.10, and as the terms “owner” and “operator” are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.10.
27. On March 6-7, 2019, Respondent stored hazardous waste at a “facility,” as that term is defined in 25 Pa. Code § 260a.10.
28. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is, and has been, a “generator” of, and has engaged in the accumulation in “containers” at the Facility of materials described below that are “solid wastes” and “hazardous wastes,” as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.10. Respondent is also a large quantity handler of universal wastes, and a licensed transporter of hazardous waste, with PADEP-issued license number PA-AH-0687, which will expire on February 28, 2022

29. On March 6-7, 2019, inspectors from the U.S. Environmental Protection Agency, Region III ("EPA") conducted a Compliance Evaluation Inspection at the Facility ("Inspection"), to examine the Facility's compliance with Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 et seq., the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Pennsylvania Hazardous Waste Management Regulations, 25 Pa. Code Ch. 260a-266a, 266b, 268a and 270a.
30. On the basis of EPA's findings during the Inspection and other information provided by Respondent to EPA, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized PAHMWR requirements.

### **Count I**

#### **(Failure to Implement the Preparedness, Prevention and Contingency Plan)**

31. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
32. The Facility's RCRA Permit, Part II, Section J.1., pertaining to Preparedness Prevention and Contingency (PPC) Plan, provides:  
  
Implementation of PPC Plan: The Permittee shall immediately carry out the provisions of the PPC plan, Attachment 3, and follow the emergency procedures described by 25 Pa. Code 264a.56 and 40 CFR 264.56(a)-(j) whenever there is a fire, explosion, emission or discharge of hazardous waste constituents which could threaten human health or the environment.
33. The Facility's RCRA Permit, Part I. Section H.5., pertaining to Duties and Requirements, provides:  
  
Duty to Mitigate: In the event of noncompliance with [RCRA], the regulations or this permit, the Permittee shall take all necessary steps to prevent and abate any releases to the environment, and shall carry out such measures as are necessary to prevent significant adverse impacts on human health or the environment.
34. At the time of the Inspection, there were several areas where AERC failed to address the risk of release of hazardous wastes:
  - a. There were at least three places in the Facility's Battery Sorting Area where there were broken fragments of waste lamps spilled on the floor.
  - b. There were also open containers of hazardous waste throughout Facility.

35. On at least March 6-7, 2019, Respondent violated Sections Part II, Section J.1 of the RCRA Permit by failing to immediately carry out the provisions of the PPC plan, Attachment 3, and follow the emergency procedures described by 25 Pa. Code 264a.56 and 40 C.F.R. § 264.56(a)-(j) whenever there was a fire, explosion, emission or discharge of hazardous waste constituents which could threaten human health or the environment.
36. On at least March 6-7, 2019, AERC also violated Part I. Section H.5. of the Facility's RCRA Permit by failing to take all necessary steps to prevent and abate any releases of hazardous waste to the environment and failing to carry out such measures as were necessary to prevent significant adverse impacts on human health or the environment.

### **Count II**

#### **(Failure to Maintain an Accurate Waste Inventory and Tracking System)**

37. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
38. The Facility's RCRA Permit, Part II. Section K.1., pertaining to Recordkeeping and Reporting provides:

Operating Record: The Permittee shall maintain a written operating record at the facility in accordance with 40 CFR § 264.73 as incorporated by reference at 25 Pa. Code § 264a.1. The operating record shall contain information from a waste inventory and tracking system. The system must identify the waste description, quantity, generator, date received, transport manifest number, location stored, and date and quantity processed. The inventory tracking system shall be capable of identifying the location of each hazardous waste within the facility and the quantity stored at each location. The storage location and quantity shall be cross-referenced with transport manifest document numbers.

39. At the time of the Inspection, the Facility's waste inventory and tracking system did not contain accurate information for the following containers, which were storing hazardous wastes:
  - a. A 55-gallon drum of mercury containing phosphor powder, with tracking number D27018-9, was located in aisle B6 of Storage Area B, was marked with an arrival date of 3/5/19, and the tracking system also showed an arrival date of 3/5/19; however, hazardous waste manifest 019987258JJK showed an arrival date of 3/1/19.
  - b. The weights of the drums in box 11 on manifest 019987258 JJK (Attachment 7) do not appear to match the weights of the drums shown in the Enviroware report of containers linked to manifest 019987258 JJK.

- c. A 55-gallon drum, with tracking number D26977-45, located in the Battery Sorting Area had a hazardous waste label and an Enviroware (tracking) label. Each of these labels indicated a different manifest number from which the waste was shipped to the Facility on. The manifest from which the drum appeared to have been sent on indicated the waste arrived at the facility on 2/25/19, while the facility's tracking system indicated the waste was received on 2/26/19.
40. On at least March 6-7, 2019, Respondent violated Part II. Section K.1. of the Facility's RCRA Permit by failing to maintain a written operating record for the Facility that contained an accurate waste inventory and tracking system.

**Count III**

**(Failure to Mark Containers of Incoming Waste with Date of Arrival at the Facility)**

41. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
42. The Facility's RCRA Permit, Part III. Section B.1., pertaining to Duration of Storage, provides:
- The Permittee shall not store containers of hazardous or residual waste or electronic scrap at this facility in excess of one (1) year. Incoming containers must be marked with the date of arrival at the facility. . .
43. At the time of the Inspection on March 6-7, 2019, the following containers at the Facility were not labelled with dates of arrival:
- a. Two cylindrical fiberboard boxes in the area of the Facility's Balcan machine, containing universal waste lamps.
  - b. One rectangular cardboard box in the area of the Facility's Balcan machine, containing universal waste lamps.
  - c. Three polyethylene 55-gallon drums in Shipping Area, containing hazardous waste mercury (EPA Hazardous Waste No. D009).
  - d. Over 100 containers of universal waste batteries, located in Storage Area F, appeared to be lacking inventory labels with the dates they arrived at the Facility.
44. On at least March 6-7, 2019, Respondent violated Part III. Section B.1. of the Facility's RCRA Permit by failing to mark numerous containers of universal, hazardous, and residual wastes with the dates of their arrival at the Facility.

**Count IV  
(Failure to Keep Containers Closed, and Failure to Transfer Waste from  
Container in Poor Condition to Container in Good Condition)**

45. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
46. The Facility's RCRA Permit, Part III. Section C., pertaining to Condition of Containers, provides:
- If a container holding hazardous or residual waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the Permittee shall transfer the waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of this permit.
47. The Facility's RCRA Permit, Part III. Section F., pertaining to Management of Containers, provides:
- The Permittee shall manage containers as required by 40 CFR § 264.173 as incorporated by reference at 25 Pa. Code § 264a.1 and 25 Pa. Code § 264a.173.
48. 40 C.F.R. § 264.173, pertaining to Management of Containers, provides:
- (a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
- (b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
49. At the time of the Inspection, the following containers storing hazardous or residual waste which were in poor condition, or were otherwise open at a time when AERC was not adding or removing waste:
- a. Two boxes of 8' universal waste lamps were located on the bottom of a stack outside of the Mercury Distillation Room. They appeared to be partially flattened by the weight of the boxes stacked on top of them and were ruptured.
  - b. At least 5 open cardboard containers of universal waste lamps in Battery Sorting Area, some of which were damaged or deformed due to their position within a stack of other containers.
  - c. One open container of universal waste lamps in the "overflow" row of Storage Area B.



- 50. On at least March 6-7, 2019, Respondent violated the requirements of Part III. Section C. of the Facility’s RCRA Permit by failing to transfer the waste from containers in poor condition to containers that are in good condition.
- 51. On at least March 6-7, 2019, Respondent also violated Part III. Section F. of the Facility’s RCRA Permit, which incorporates by reference 40 C.F.R. § 264.173, by failing to keep containers closed during storage, except when it is necessary to add or remove waste, and by storing waste in a manner which may rupture containers or cause them to leak.

**Count V**  
**(Failure to Submit Quarterly Drawings of Facility Floor Plan to PADEP)**

- 52. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
- 53. The Facility’s RCRA Permit, Part III. Section D.1.a., pertaining to Placement Requirements, provides:  
  
Quarterly Report Drawing – It shall be the responsibility of the Permittee to modify and keep on-site a floor plan depicting the different categories of hazardous and residual waste contained in each staging, processing and storage area. This floor plan must be submitted to the Department on a quarterly basis. Specific information should include the staging, processing and storage area location, hazardous waste codes, and height and aisle width between containers. . . .
- 54. At the time of the Inspection on March 6-7, 2019, AERC was not submitting a drawing of the Facility’s floor plan to PADEP on a quarterly basis.
- 55. From February 2016 (five years prior to the current date) to March 2019, Respondent violated Part III. Section D.1.a. of the Facility’s RCRA Permit by failing to submit a floor plan depicting the updated categories of hazardous and residual waste contained in each staging, processing and storage area to PADEP on a quarterly basis.

**Count VI**  
**(Failure to Comply with Waste Placement Requirements)**

- 56. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
- 57. The Facility’s RCRA Permit, Part III. Section D.1.c.1., pertaining to Placement Requirements, Storage and Staging Areas, provides:

See Attachment 1 [of the RCRA Permit] for Tables identifying approved storage and staging areas and their maximum volumes.

58. Tables 1 and 2 of the RCRA Permit lists approved waste storage areas for specified wastes, and Table 3 provides approved waste processes.
59. At the time of the Inspection, AERC was storing wastes in a number of areas at the Facility which were not listed in Table 1 or Table 2 of the Permit, including:
  - a. Maintenance Area & Welding Area – 14 pallets of universal waste lamps in two rows.
  - b. Between Storage Area B and C – there was an extra row of waste storage, which was blocking accessibility to Storage Area B rows.
  - c. Outside the boundaries of Storage Area F – waste stored perpendicular and adjacent to approved Storage F area, in an area that has not been approved for waste storage. There were also waste batteries in this area, which were not an approved waste type for Storage Area F. PADEP had approved Storage Area F for storage of e-wastes, CRTs, and residual solid wastes.
60. On at least March 6-7, 2019, Respondent violated the requirements of Part III. Section D.1.c.1. of the Facility's RCRA Permit by failing to store hazardous waste in accordance with the Facility RCRA Permit's storage and staging plan.

**Count VII  
(Failure to Comply with Container Stacking Height,  
Width and Depth Requirements in RCRA Permit)**

61. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
62. The Facility's RCRA Permit, Part III. Section H., pertaining to Container Stacking Height, Width, and Depth, provides:

The Permittee shall store containers of hazardous or residual waste as required by 40 CFR § 264.173 as incorporated by reference at 25 Pa. Code § 264a.1 and 25 Pa. Code § 264a.173 and the attached plan and specifications, Attachment 6. The aisle space (minimum of two (2) feet wide) and stacking height (maximum of six (6) feet high . . .) shall be adequate to allow for safe management of waste and the unobstructed movement of personnel, fire protection equipment, spill control equipment, decontamination equipment and emergency vehicles to any area of the facility operation in event of an emergency plus inspection, contamination and remedial action.
63. At the time of the Inspection there were rows and stacks of waste stored closer than 2 feet apart, in at least three areas:

- a. Battery Sorting Area
  - b. Storage Area B (between B6 and B7)
  - c. Storage Area B (between B4 and B5)
64. On at least March 6-7, 2019, Respondent violated Part III. Section H. of the Facility's RCRA Permit by failing to comply with container stacking height, width and depth requirements in the Facility's RCRA Permit.

**Count VIII**

**(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)**

65. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
66. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b) (pertaining to the Hazardous Waste Permit Program), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
67. During the 2019 Inspection, AERC was accumulating hazardous or universal waste at the Facility, in several areas and units not covered by the Facility RCRA Permit.

*Generator Storage of Hazardous Waste (the "Generator Permit Exemption")*

68. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) (2005) (recently recodified in 40 C.F.R. § 262.16(a)), with exceptions not relevant here, provides:

[A] generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed:

- (i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

\* \* \*

- (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

- (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste" . . .

*Generator Permit Exemption: Failure to Mark Each Container with the Date that Accumulation Began*

69. At the time of the Inspection on March 6-7, 2019, Respondent had failed to mark a container storing hazardous waste with the date upon which each period of accumulation began, in an area of the Facility not covered by the RCRA Permit.
70. At a minimum, Respondent failed to mark with the date upon which accumulation began, or otherwise track the accumulation start date for, a 450-gallon tote used to collect hazardous waste in the form of wastewater (EPA Hazardous Waste No. D009).

*Generator Permit Exemption: Failure to Mark Each Container of Hazardous Waste with the Required Words*

71. At the time of the Inspection on March 6-7, 2019, Respondent had failed to label or mark containers storing universal waste or hazardous waste with the proscribed words, in an area of the Facility not covered by the RCRA Permit.
72. At a minimum, Respondent failed to mark with the proscribed words, the following containers of hazardous waste:
  - a. A satellite accumulation area container storing broken waste lamps, located near the Balcan Machine.
  - b. A 450-gallon tote used to collect hazardous waste in the form of wastewater (EPA Hazardous Waste No. D009) and transfer it to the wastewater treatment unit.
73. The requirements of 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, apply to these areas of the Facility because it failed to meet several conditions of the generator permit exemption.
74. On March 6-7, 2019, Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270, by storing hazardous waste at the Facility without a permit, in areas of the Facility which were not covered the RCRA Permit.

**Count IX**

**(Failure to Retain TSD-Signed Copy of Manifest or Submit Annotated Manifest)**

75. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

76. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. Part 262, Subpart B ("The Manifest"), and Subpart D ("Recordkeeping and Reporting"), with exceptions not relevant herein.
77. 40 CF.R. § 262.20(a)(1) provides, in relevant and applicable part, that "[a] generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal . . . must prepare a Manifest . . . according to instructions included in the appendix to this part."
78. 40 CF.R. § 262.23(a) further provides that "[t]he generator must (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and (3) Retain one copy, in accordance with § 262.40(a)."
79. 40 CF.R. § 262.40(a) provides that "[a] generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter."
80. 40 CF.R. § 262.42(a)(2) provides:

A generator of greater than 1000 kilograms of hazardous waste in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

81. During the Inspection, EPA inspectors observed that on December 14, 2018, Respondent had shipped 13,447 pounds of hazardous waste mercury (with EPA Hazardous Waste Nos. D009 and D011) in 16 fiber containers and 4 metal drums to Waste Management – Mercury Waste, Inc. of Union Grove, Wisconsin under Manifest #019481501JJK. However, Respondent's files did not contain a return Manifest with the handwritten signature of the TSD facility.
82. Neither did Respondent submit to the EPA Regional Administrator an Exception Report with a legible copy of the Manifest and a cover letter signed by an authorized representative of Respondent explaining the efforts taken to locate the hazardous waste and the results of those efforts.

- 83. On at least March 6-7, 2019, Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 CF.R. § 262.40(a), by failing to maintain a manifest signed by the designated facility for hazardous waste shipped under Manifest #019481501JJK.
- 84. In the alternative, from January 28, 2019 (45 days after the waste was accepted by the initial transporter) to at least March 6, 2019 (the date of the EPA Inspection), Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 CF.R. § 262.42(a)(2), by failing to timely submit to EPA an Exception Report and legible copy of the manifest, with some indication that AERC had not received confirmation of delivery of the hazardous waste.

**Count X**  
**(Failure to Sign and Date Manifests when Acting as Transporter)**

- 85. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
- 86. Pursuant to 25 Pa. Code § 263a.10, which incorporates by reference 40 C.F.R. § 263.20 (pertaining to “Standards Applicable to Transporters of Hazardous Waste, Compliance with the Manifest System and Recordkeeping”), provides:
  - (b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
  - (c) The transporter must ensure that the manifest accompanies the hazardous waste. . . .
  - (d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:
    - (1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and
    - (2) Retain one copy of the manifest in accordance with § 263.22; and
    - (3) Give the remaining copies of the manifest to the accepting transporter or designated facility.
- 87. At the time of the Inspection, an EPA inspector reviewed manifests at the Facility, and observed that Respondent had failed to sign the following manifest while acting as a transporter of hazardous waste to the Facility: Incoming Manifest 01289899076JJK records Respondent, as transporter, accepted for transport two wooden cases containing

crushed fluorescent lamps (EPA Hazardous Waste No. D009), from Republic Environmental Systems Transport Group, on December 13, 2018. However, there was no signature in Box 17 documenting that AERC acknowledged receipt of the waste.

88. Respondent violated 25 Pa. Code § 263a.10, which incorporates by reference 40 C.F.R. § 263.20(b) and (d)(1), by failing to sign Box 17 on a manifest, acknowledging acceptance of the associated shipments of hazardous waste.

### CIVIL PENALTY

89. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TWENTY-SEVEN THOUSAND DOLLARS (\$27,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
90. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
91. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket No. RCRA-03-2021-0064;
  - b. All checks shall be made payable to the "United States Treasury";
  - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent by electronic mail, simultaneously to:

Regional Hearing Clerk  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

Natalie L. Katz  
Senior Assistant Regional Counsel  
U.S. EPA, Region III (3RC40)  
[katz.natalie@epa.gov](mailto:katz.natalie@epa.gov)

- 92. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 93. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 94. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
- 95. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first



thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

96. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
97. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

### **GENERAL SETTLEMENT CONDITIONS**

98. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
99. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

100. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

101. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or

local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the RCRA, or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

102. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

### **EXECUTION /PARTIES BOUND**

103. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

### **EFFECTIVE DATE**


104. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

### **ENTIRE AGREEMENT**

105. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: **AERC ACQUISITION CORPORATION,  
DBA AERC RECYCLING SOLUTIONS,  
A CLEAN EARTH COMPANY**

Date: 3-31-2021

By:   
Mark Kasper  
COO, AERC Acquisition Corporation,  
dba AERC, A Clean Earth Company

For the Complainant: **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III**

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Karen Melvin  
Director, Enforcement and Compliance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Natalie L. Katz  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III

In Re: AERC Acquisition Corp.

EPA Docket No. RCRA-03-2021-0064

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

<b>In the Matter of:</b>	:	
	:	
<b>AERC Acquisition Corporation</b>	:	<b>U.S. EPA Docket No. RCRA-03-2021-0064</b>
<b>dba AERC Recycling Solutions,</b>	:	
<b>A Clean Earth Company</b>	:	<b>Proceeding under Section 3008(a) and (g)</b>
<b>2591 Mitchell Avenue</b>	:	<b>of the Resource Conservation and Recovery</b>
<b>Allentown, PA 18103</b>	:	<b>Act, as amended, 42 U.S.C. § 6928(a) and (g)</b>
	:	
<b>Respondent.</b>	:	
	:	
<b>AERC Acquisition Corporation</b>	:	
<b>dba AERC Recycling Solutions,</b>	:	
<b>A Clean Earth Company</b>	:	
<b>2591 Mitchell Avenue</b>	:	
<b>Allentown, PA 18103</b>	:	
	:	
<b>Facility.</b>	:	

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, AERC Acquisition Corporation dba AERC Recycling Solutions, A Clean Earth Company, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and the statutory factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g).

**NOW, THEREFORE, PURSUANT TO** Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), as amended, 42 U.S.C. § 6928(a) and

(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of TWENTY-SEVEN THOUSAND DOLLARS (\$27,000.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III