

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

Nov 24, 2009

This form was originated by: John Ruygero
Name of Contact person

~~10/26/09~~
Date

in the EPA Region 3, ORC
Office

at ~~215 814 2142~~
Phone number 215 814 2142

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment
COMBINED SYSTEMS, INC.

The Total Dollar Amount of Receivable \$ 65,000 See CAFO for installment schedule
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number KCRA-03-2010-001

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office LAND AND Chemical Division, Region 3

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 3. Regional Counsel |

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

In the Matter of:)	
)	
Combined Systems, Inc.)	Docket No. RCRA-03-2010-0001
98 Cuttermill Road, Ste 231)	
Great Neck, NY 11021)	CONSENT AGREEMENT
)	
Respondent)	
)	
Combined Systems, Inc. and)	
Combined Tactical Systems, Inc.)	
388 Kinsman Road)	
Jamestown, PA 16134)	Proceeding Under Section 3008(a) and (g)
)	of the Resource Conservation and
EPA ID No. PAR000039875)	Recovery Act, as amended, 42 U.S.C.
)	§ 6928(a) and (g)
Facility)	

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CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”), and Combined Systems, Inc. (“Respondent”), pursuant to 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. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order (“FO,” hereinafter jointly referred to as the “CAFO”) both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent’s facility at 388 Kinsman Road, Jamestown, Pennsylvania (the “Facility”).

2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted final authorization to the Commonwealth of Pennsylvania to administer its state hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Revised Pennsylvania Hazardous Waste Regulations (“PaHWR”) were authorized by EPA on September 26, 2000 (effective November 27, 2000). Additional PaHWR amendments were authorized by EPA on January 20, 2004 (effective March 22, 2004) and April 29, 2009 (effective June 29, 2009). Through such

authorizations, the authorized PaHWR set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA. *See*, 65 Fed. Reg. 57734 (September 26, 2000), 69 Fed. Reg. 2674 (January 20, 2004), and 74 Fed. Reg. 19453 (April 29, 2009).

3. The authorized PaHWR that became effective on November 27, 2000 incorporate by reference certain federal hazardous waste management regulations that were in effect on May 1, 1999. The authorized PaHWR that became effective on March 22, 2004 incorporate by reference certain federal hazardous waste management regulations that were adopted between July 7, 1999 and June 28, 2001. The factual allegations and legal conclusions in this CAFO are based on the PaHWR authorized and in effect at the time of the violations alleged herein. The revisions to the PaHWR that were authorized in 2004 and 2009 are not applicable to the violations set forth herein.
4. Prior to issuing this CAFO, EPA provided notice to the Commonwealth of Pennsylvania, in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA.
6. Except as provided in paragraph 5, Respondent neither admits nor denies the specific factual allegations set forth in this CA.
7. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the FO, or the enforcement of this CAFO.
8. For the purposes of this proceeding, Respondent hereby expressly waives any right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Respondent shall bear its own costs and attorney's fees incurred in connection with this proceeding.

Findings of Fact and Conclusions of Law

11. Complainant has determined that Respondent has violated RCRA, and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and .14(a)(2) and (3).
12. Respondent, Combined Systems, Inc., is a corporation organized on or about March 19, 1981 pursuant to the laws of the State of New York.

13. Respondent is, and was at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 25 Pa. Code § 260a.10.
14. Pursuant to 25 Pa. Code § 260a.10, “[f]acility” means, inter alia, “[t]he land, structures and other appurtenances or improvements ... where hazardous waste is treated, stored or disposed.”
15. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “hazardous waste” means “a hazardous waste as defined in [40 C.F.R. § 261.3]”
16. 25 Pa. Code § 261a.1 incorporates by reference 40 C.F.R. § 261.3(a), which provides, in relevant part:
 - (a) A solid waste, as defined in [40 C.F.R.] § 261.2, is a hazardous waste if:
 - (1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in [40 C.F.R. §§ 261.20-.24]
 - (ii) It is listed in [40 C.F.R. §§ 261.30-.38]
* * * *
 - (iv) It is a mixture of solid waste and one or more hazardous wastes listed in [40 C.F.R. §§ 261.30-.38]
17. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “generator” means “any person, by site, 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.”
18. Since at least October 2004, Respondent has generated more than 1,000 kilograms of hazardous waste per month at the Facility.
19. Since at least 1996, Respondent has been a “generator” at the Facility, as that term is defined in 25 Pa. Code § 260a.1.
20. On June 26, 2007, representatives from EPA Region III and the Pennsylvania Department of Environmental Protection (“PADEP”) inspected Respondent’s Facility to determine its compliance with the hazardous waste management requirements of RCRA Subtitle C and the authorized PaHWR.

COUNT I

(Operating a facility without a permit or interim status)

21. The allegations in paragraphs 1 through 20, above, are incorporated herein by reference as though fully set forth at length.

22. RCRA § 3005(a), 42 U.S.C. § 6925(a), in pertinent part, prohibits treatment, storage, and disposal of hazardous waste and construction of any new facility except in accordance with a permit (“RCRA permit”) issued pursuant to that provision.
23. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, “interim status”) until such time as final administrative disposition of such application is made.
24. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.70, provides, in pertinent part with exceptions not relevant to this CA, that:
 - (a) Any person who owns or operates an “existing HWM facility” or a facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit [for the treatment, storage, or disposal of any hazardous waste] shall have interim status and shall be treated as having been issued a permit to the extent he or she has:
 - (1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity.
 - (2) Complied with the requirements of [40 C.F.R.] § 270.10 governing submission of part A applications.
25. 25 Pa. Code § 270a.1 incorporates by reference 40 C.F.R. § 270.1(b), which provides, in pertinent part, that owners and operators of hazardous waste management facilities must have “interim status” or a permit for the treatment, storage, or disposal of any hazardous waste, and that the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received such a permit is prohibited.
26. Respondent has never obtained a permit, pursuant to RCRA § 3005(a) or 25 Pa. Code § 270a.1, for the treatment, storage, or disposal of hazardous waste.
27. Respondent has never had “interim status,” as described in RCRA § 3005(e) and 40 C.F.R. § 270.70, in lieu of a permit for the treatment, storage, or disposal of hazardous waste at the Facility.
28. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “container” means a “portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.”
29. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a), which provides, in pertinent part with exceptions not relevant to this matter:

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 ... 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 ... is labeled or marked clearly with the words "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR [§] 268.7(a)(5).

* * * *

30. Pursuant to the provisions of RCRA § 3005(a) and (e) and 25 Pa. Code §§ 270a.1 and 262a.10 referenced above, Respondent, as a generator of hazardous waste who has not had interim status or a permit for the storage of hazardous waste, has been prohibited from storing hazardous waste at its Facility since it began operating in 1996, unless Respondent qualified for an exemption from the RCRA permit requirement by, among other things, managing each container of hazardous waste generated at the Facility in accordance with 40 C.F.R. Part 265, subpart I (§§ 265.170 - .178) ; clearly labeling each container with the date upon which each period of accumulation begins; clearly and visibly marking each container with the words "Hazardous Waste;" and complying with 40 C.F.R. § 265.16.
31. At the time of the EPA inspection on June 26, 2007, Respondent was storing waste materials in five (5) one-cubic yard cardboard boxes labeled with the words "Hazardous Waste" in Building O at the Facility.
32. One of the one-cubic yard cardboard boxes ("Box 1") referred to in paragraph 31, above, contained filters from masks/respirators or ventilation units, liners from contaminated drums, and other debris generated from the manufacturing of tear-gas products which includes "CS," chloroacetophenone, and other chemicals.
33. The materials in Box 1, referred to in paragraph 32, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Numbers D001 and U149.
34. Hazardous waste was first placed in Box 1 on May 21, 2007.
35. One of the one-cubic yard cardboard boxes ("Box 2") referred to in paragraph 31, above, contained slurry rags and paper waste mixed with chemical wastes generated from the manufacture of smoke and tear-gas canisters.
36. The materials in Box 2 referred to in paragraph 35, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D001.

37. Hazardous waste was first placed in Box 2 on April 18, 2007.
38. One of the one-cubic yard cardboard boxes ("Box 3") referred to in paragraph 31, above, contained rags mixed with waste acetone generated from cleaning canisters.
39. The materials in Box 3 referred to in paragraph 38, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number U002. (Complainant notes that the Hazardous Waste Number assigned by Respondent to this waste is incorrect.)
40. Hazardous waste was first placed in Box 3 on May 21, 2007.
41. One of the one-cubic yard cardboard boxes ("Box 4") referred to in paragraph 31, above, contained rags containing waste acetone generated from cleaning canisters prior to printing, silk screening or taping.
42. The materials in Box 4 referred to in paragraph 41, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number U002. (Complainant notes that the Hazardous Waste Number assigned by Respondent to this waste is incorrect.)
43. Hazardous waste was first placed in Box 4 on May 21, 2007.
44. One of the one-cubic yard cardboard boxes ("Box 5") referred to in paragraph 31, above, contained personal protection equipment (e.g., disposable coveralls and gloves) mixed with hazardous waste generated by Respondent during the production of "CS," pellet press operation, and final assembly of tear-gas and smoke munitions.
45. The materials in Box 5 referred to in paragraph 44, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Numbers D001 and U149.
46. Hazardous waste was first placed in Box 5 on April 18, 2007.
47. The five one-cubic yard cardboard boxes referred to in paragraphs 31-46, above, are "containers" as defined in 25 Pa. Code § 260a.1.
48. At the time of the EPA inspection on June 26, 2007, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on any of the five one-cubic yard cardboard boxes referred to in paragraphs 31-47, above.
49. At the time of the EPA inspection on June 26, 2007, Respondent was storing unused expired chemicals in two 55-gallon drums labeled with the words "Hazardous Waste" inside a bulk shipping container which Respondent designated as "Container A-4." Respondent had marked June 26, 2007 on each of these two 55-gallon drums as the date upon which the period of hazardous waste accumulation began.

50. The chemicals in the drums referred to in paragraph 49, above, are “hazardous waste” identified by Respondent as having Hazardous Waste Number D001.
51. The two 55-gallon drums referred to in paragraphs 49-50, above, are “containers” as defined in 25 Pa. Code § 260a.1.
52. Respondent determined that the chemicals in the drums referred to in paragraphs 49-51, above, were hazardous waste on June 20, 2007 and began accumulating hazardous waste in those drums on that date.
53. The date marked by Respondent on each of the drums referred to in paragraphs 49-52, above, to indicate the date upon which the period of hazardous waste accumulation began was incorrect.
54. From October 2004 until June 26, 2007, Respondent marked containers of hazardous waste with the date on which such containers became full rather than the date on which accumulation of hazardous waste in such containers began, as required by 40 C.F.R. § 262.34(a)(2).
55. By failing to clearly and/or accurately mark the date on which the period of accumulation began for each container referred to in paragraphs 31-54, above, in accordance with 40 C.F.R. § 262.34(a)(2), Respondent failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1, from October 2004 to June 26, 2007 .
56. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), which requires that generators comply with 40 C.F.R. § 265.174. 40 C.F.R. § 265.174 provides, in relevant part, that “[a]t least weekly, the owner or operator must inspect areas where containers are stored ... [to] look for leaking containers and for deterioration of containers.”
57. During the period between October 2004 and June 26, 2007, Respondent was routinely using locations it designated as “Building O” and “Container A-4” for the storage of more than 55 gallons of hazardous waste in containers at the Facility.
58. Respondent did not inspect Building O at least weekly between July 22, 2005 and June 22, 2007.
59. Respondent did not inspect Container A-4 at least weekly between June 8, 2004 and June 26, 2007.
60. By failing to inspect container storage areas, Building O and Container A-4, at least weekly, in accordance with 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174, as alleged in paragraphs 58 and 59, above, Respondent failed to qualify for an exemption, under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

61. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(4), which requires that generators comply with 40 C.F.R. § 265.16. 40 C.F.R. § 265.16 provides, in relevant part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 265]. ...

* * * *

(c) Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 265.16(a)].

* * * *

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under [40 C.F.R. § 265.16(d)(1)] ...;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under [40 C.F.R. § 265.16(d)(1)];

(4) Records that document that the training or job experience required under paragraphs [40 C.F.R. § 265.16(a), (b), and (c)] has been given to, and completed by, facility personnel.

62. To qualify for the exemption, pursuant to 40 C.F.R. § 262.34(a), from the requirement to have a permit for the storage of hazardous waste, Respondent was required by 25 Pa. Code § 262a.10 to train all facility personnel responsible for hazardous waste management and to maintain documents and records in accordance with 40 C.F.R. § 265.16.
63. Respondent provided hazardous waste training for employees of the Facility during October 2005 and February 2007.
64. Respondent did not provide hazardous waste training for employees of the Facility in 2004 and 2006.
65. Between October 2004 and December 28, 2007, Respondent did not prepare and/or maintain records of documented job titles, job descriptions, or written descriptions of the type and amount of both introductory and continuing training that would be given to each person who held a position at the Facility related to hazardous waste management during that time.
66. By failing to provide hazardous waste training for employees at the Facility during 2004 and 2006, in accordance with 40 C.F.R. § 265.16(a) and/or (c), Respondent was not

complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

- 67. By failing to maintain records of training as required by 40 C.F.R. § 265.16(d), Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.
- 68. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(c), which provides, in pertinent part with exceptions not relevant to this matter:

(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste ... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

- (i) Complies with [40 C.F.R.] ... § 265.173(a) ...; and
- (ii) Marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

* * * *

- 69. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 14-gallon red fire can in Building A at the Facility, rags mixed with waste acetone that were used to clean the exterior parts of shells and/or grenades.
- 70. The materials in the red fire can, referred to in paragraph 69, above, were “hazardous waste” and are identified by Hazardous Waste Numbers D001 and F003.
- 71. At the time of the EPA inspection on June 26, 2007, the 14-gallon red fire can, referred to in paragraphs 69 and 70, above, was not labeled with the words “Hazardous Waste” or with other words that identified the contents of the container.
- 72. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 55-gallon drum in Building C at the Facility, spent acetone used to clean taped or glued parts assembled in Building C.
- 73. The material in the 55-gallon drum, referred to in paragraph 72, above, was “hazardous waste” and is identified by Hazardous Waste Numbers D001 and F003.
- 74. At the time of the EPA inspection on June 26, 2007, the 55-gallon drum, referred to in paragraphs 72 and 73, above, was not labeled with the words “Hazardous Waste” or with other words that identified the contents of the container.

75. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 14-gallon red fire can in Building G at the Facility, rags mixed with acetone and "Easisolve 120" which were used to clean the exterior parts of shells and/or grenades.
76. The materials in the red fire can, referred to in paragraph 75, above, were "hazardous waste" and are identified by Hazardous Waste Numbers D001 and F003.
77. At the time of the EPA inspection on June 26, 2007, the red fire can, referred to in paragraphs 75 and 76, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
78. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 55-gallon drum in Building H at the Facility, spent acetone used to clean taped or glued parts assembled in Building H.
79. The material in the 55-gallon drum, referred to in paragraph 78, above, was "hazardous waste" and is identified by Hazardous Waste Numbers D001 and F003.
80. The 55-gallon drum, referred to in paragraphs 78 and 79, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
81. At the time of the EPA inspection on June 26, 2007, Respondent was storing materials in two 30-gallon drums outside of Building I at the Facility.
82. One of the drums ("Drum 1") referred to in paragraph 81, above, contained hazardous waste mixed with personal protection equipment, *e.g.*, suits, gloves, and hoods, worn by workers during processing of potassium based fuel mix for smoke and tear-gas canisters, mixing of fuel with smoke compositions, the pelletizing of fuel mixtures into pellets, and the transfer of pellets into canisters.
83. The materials in Drum 1 referred to in paragraph 82, above, were "hazardous waste" and are identified by Hazardous Waste Numbers D001 and U149.
84. The materials in one of the drums ("Drum 2") referred to in paragraph 81, above, contained hazardous waste chemicals mixed with "slurry paper" waste which is used to cover the tops of tables during slurry processing to catch any drippings.
85. The materials contained in Drum 2, referred to in paragraph 84, above, were "hazardous waste" and are identified by Hazardous Waste Number D001.
86. The two 30-gallon drums, referred to in paragraphs 81 through 85, above, were not labeled with the words "Hazardous Waste" or with other words that identified the contents of the containers.

87. At the time of the EPA inspection on June 26, 2007, Respondent was storing rags that had been dipped in acetone used to remove excess epoxy from metal rods in at least one of several 14-gallon red fire cans located in Building MS-2 at the Facility.
88. The mixture of acetone and rags contained in at least one of the 14-gallon red fire cans, referred to in paragraph 87, above, was "hazardous waste" and is identified by Hazardous Waste Number D001.
89. The 14-gallon red fire cans referred to in paragraphs 87 and 88, above, were not labeled with the words "Hazardous Waste" or with other words that identified the contents of the containers.
90. By failing to mark containers of hazardous waste as alleged in paragraphs 71, 74, 77, 80, 86, and 89, above, with the words "Hazardous Waste," or with other words that identified the contents of the containers, in accordance with 25 Pa. Code § 262a.10, Respondent failed to qualify for exemption, under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.
91. To qualify for the exemption, pursuant to 40 C.F.R. § 262.34, from the requirement to have a permit for the storage of hazardous waste, Respondent was required by 25 Pa. Code § 262a.10 [40 C.F.R. §262.34(a) and/or (c)(1)(i)] to manage containers of hazardous waste in accordance with 40 C.F.R. § 265.173(a), which provides that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."
92. At the time of the EPA inspection on June 26, 2007, Respondent was storing spilled, black/smokeless powder or powder from cut shells in Building D2 at the Facility in one open 5-gallon fiber drum labeled with the words "Hazardous Waste."
93. The material in the open 5-gallon fiber drum, referred to in paragraph 92, above, was "hazardous waste" and is identified by Hazardous Waste Number D001.
94. At the time of the EPA inspection on June 26, 2007, the fiber drum referred to in paragraphs 92 and 93, above, was not closed.
95. At the time of the EPA inspection on June 26, 2007, no waste was being added to or removed from the open fiber drum referred to in paragraphs 92-94, above.
96. By failing to keep closed the fiber drum referred to in paragraphs 92-95, above, when waste was not being added to or removed from it, as required by 40 C.F.R. § 265.173(a), Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

97. 25 Pa. Code § 260a.3(b) provides that “Federal regulations that are cited in [the PaHWR] or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.”
98. 25 Pa. Code § 265a.175 provides, in pertinent part:
- (a) Container storage areas shall have a containment system capable of collecting and holding spills, leaks and precipitation. The containment system shall:
 - (1) Have an impervious base underlying the containers which is free of cracks or gaps so as to contain leaks, spills and accumulated rainfall. All joints in an impervious base shall be sealed with appropriate sealants.
 - (2) Provide efficient drainage from the base to a sump or collection system.
 - (3) Have sufficient capacity to contain the entire volume of the largest container, or 10% of the total volume of all the containers, whichever is greater.
- * * * *
99. 25 Pa. Code § 265a.179 incorporates by reference 40 C.F.R. § 264.175, which provides, in pertinent part with exceptions not relevant to this matter, that:
- (a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section
 - (b) A containment system must be designed and operated as follows:
 - (1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed;
 - (2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation
100. Respondent has stored both solid and liquid hazardous waste in containers in Container A-4, referred to in paragraphs 49 and 57, above, at various times between October 2004 and June 26, 2007. Container A-4 is located outdoors, directly above the land.
101. The floor of Container A-4 is constructed of wood and is not sufficiently impervious to contain leaks, spills and/or accumulated precipitation until the collected materials are detected and removed.
102. The floor of Container A-4 is not sloped or operated to drain and remove liquids resulting from leaks, spills, or precipitation.
103. By storing liquid hazardous waste, from October 2004 until June 26, 2007, in containers in Container A-4, which did not have an impervious and sloped base designed and operated in accordance with the secondary containment standards set forth in 25 Pa. Code §§ 265a.175(a) and 265a.179 and 40 C.F.R. § 264.175, as alleged in paragraphs 100-102, above, Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R.

- § 262.34(a) (which in turn incorporates by reference the above-cited secondary containment standards), and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.
104. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “owner” means “the person who owns a facility or part of a facility.”
 105. Since at least 1996, Respondent has been the “owner” of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
 106. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, “operator” means “the person responsible for the overall operation of a facility.”
 107. Since at least 1996, Respondent has been the “operator” of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
 108. For each of the reasons alleged in paragraphs 55, 60, 66, 67, 90, 96, and 103, above, Respondent did not qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1, and, therefore, was prohibited from storing hazardous waste at the Facility without a permit from October 2004 to December 28, 2007.
 109. From October 2004 to June 26, 2007, Respondent violated RCRA § 3005(a) and 25 Pa. Code § 270a.1 by storing containers of hazardous wastes under the circumstances alleged in paragraphs 31 through 102, above, without a permit to store such waste, or “interim status,” and without qualifying for an exemption from the permit requirement in accordance with 25 Pa. Code § 262a.10, for which violation RCRA § 3008(a) and (g) authorizes EPA to assess a penalty.

COUNT II

(Failure to keep container closed)

110. The allegations in paragraphs 1 through 109 are incorporated herein by reference as though fully set forth at length.
111. Because it failed to comply with the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, Respondent’s Facility was required to comply with the requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities set forth at 25 Pa. Code Ch. 264a.
112. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.173(a), which provides that “[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.”

- 113. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep the 5-gallon fiber drum, referred to in paragraphs 92-95, above, closed when waste was not being added to or removed from it.
- 114. Respondent's failure to keep a container of hazardous waste closed when nothing was being added to or removed from that container, as alleged in paragraphs 92-95, above, violates 25 Pa. Code § 264a.1.

COUNT III

(Failure to Conduct Weekly Inspections of Central Hazardous Waste Accumulation Areas)

- 115. The allegations in paragraphs 1 through 114, above, are incorporated herein by reference as though fully set forth at length.
- 116. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.174, which provides, in relevant part, that, "[a]t least weekly, the owner or operator must inspect areas where containers are stored"
- 117. By failing to conduct weekly inspections of Building O and Container A-4, as alleged in paragraphs 58 and 59, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT IV

(Failure to train employees responsible for hazardous waste management)

- 118. The allegations in paragraphs 1 through 117, above, are incorporated herein by reference as though fully set forth at length.
- 119. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16, which requires, in pertinent part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 264]. ...

* * * *

(c) Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 264.16(a)].

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under (d)(1) of this section.

...

(3) A written description of the type and amount of both introductory and continuing training that will be given to each employee filling a position listed under (d)(1) of this section;

(4) Records that document that the training or job experience required under 40 C.F.R. § 264.16(d)(1), (2), and (3), has been given to and completely by facility personnel.

- 120. As an owner and operator, Respondent has been required to train all Facility personnel responsible for hazardous waste management in accordance with 40 C.F.R. § 264.16(a) and (c).
- 121. By failing to provide hazardous waste management training for employees at the Facility in 2004 and 2006, as alleged in paragraph 64, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT V

(Failure to document hazardous waste management training program)

- 122. The allegations in paragraphs 1 through 121, above, are incorporated herein by reference as though fully set forth at length.
- 123. As an owner and operator, Respondent has been required to maintain documents and records pertaining to hazardous waste management training in accordance with 40 C.F.R. 264.16(d).
- 124. By failing to maintain records to document training for each position related to hazardous waste management at the Facility between October 2004 and December 28, 2007, as alleged in paragraph 65, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT VI

(Failure to keep records of weekly storage facility inspections)

- 125. The allegations in paragraphs 1 through 124, above, are incorporated herein by reference as though fully set forth at length.
- 126. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.15, which provides, in relevant part, that:

(a) The owner or operator must inspect his facility for malfunctions and deterioration ... and discharges

* * * *

(b)(4) ... At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174

* * * *

(d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. ...

- 127. Respondent did not record inspections of Building O at the Facility from July 22, 2005 through June 22, 2007 and, as of June 26, 2007, had not kept any records of any such inspections performed during that period.
- 128. Respondent did not record inspections of Container A-4 at the Facility from June 8, 2004 through June 26, 2007 and, as of June 26, 2007, had not kept any records of any such inspections performed during the three-year period immediately preceding that date.
- 129. By failing to keep records of inspections of Building O, for the period July 22, 2005 through June 22, 2007, and Container A-4, for the period June 27, 2004 through June 26, 2007, as required by 40 C.F.R. § 264.15(d), Respondent violated 25 Pa. Code § 264a.1.

COUNT VII

(Failure to provide a containment system for hazardous waste storage areas)

- 130. The allegations in paragraphs 1 through 129, above, are incorporated herein by reference as though fully set forth at length.
- 131. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.175, which is quoted in relevant part in paragraph 99, above.
- 132. As an owner and operator, Respondent has been required to store any containers of liquid hazardous waste only in an area with secondary containment designed and operated in accordance with 40 C.F.R. § 264.175.
- 133. By storing liquid hazardous waste, from October 2004 until June 26, 2007, in containers in Container A-4, which did not have an impervious and sloped base designed and operated in accordance with 40 C.F.R. § 264.175, as alleged in paragraphs 100-102, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT VIII

(Failure to make a waste determination)

- 134. The allegations in paragraphs 1 through 133, above, are incorporated herein by reference as though fully set forth at length.
- 135. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.11, which requires, in relevant part, that “[a] person who generates a solid waste, as defined in 40 CFR [§] 261.2, must determine if that waste is a hazardous waste”
- 136. Prior to June 26, 2007, Respondent generated, stored, and disposed of approximately the following numbers of waste aerosol cans during the years indicated in the table below:

Year	2004	2005	2006	2007
No. of aerosol cans	383	185	156	68

137. The aerosol cans referred to in paragraph 136, above, including the product and propellant residues contained in those cans, are "solid waste" as that term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2.
138. Respondent routinely sent the waste aerosol cans, referred to in paragraphs 136 and 137, above, off-site for disposal as municipal solid waste.
139. Prior to the EPA inspection on June 26, 2007, Respondent had never determined whether its discarded aerosol cans, including the product and propellant residues contained in those cans, were hazardous wastes.
140. By failing to determine whether a solid waste, *i.e.*, the waste aerosol cans and their contents, which Respondent discarded and sent off-site for disposal, were hazardous wastes, Respondent violated 25 Pa. Code § 262a.10.

COUNT IX

(Failure to Properly Manifest Off-Site Shipments of Hazardous Waste)

141. The allegations in paragraphs 1 through 140, above, are incorporated herein by reference as though fully set forth at length.
142. 25 Pa. Code § 262a.10 incorporates by reference, in part, 40 C.F.R. Part 262, including the Appendix thereto (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions)), which in turn, provides that generators of hazardous waste must complete and use such manifest for both intrastate and interstate transportation.
143. 25 Pa. Code § 262a.20(a)(1) provides that generators must complete the manifest form in its entirety and distribute copies of such manifest in accordance with its instructions. 40 C.F.R. § 262.23 provides that:
 - (a) The generator must:
 - (1) Sign the manifest certification by hand;
 - (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
 - (3) Retain one copy, in accordance with [40 C.F.R.] § 262.40(a).
 - (b) The generator must give the transporter the remaining copies of the manifest.
144. Respondent did not routinely remove all of the product and propellant from the aerosol cans referred to in paragraphs 136-138, above, so that they were empty prior to offering them for transportation to an offsite disposal facility.
145. From October 2004 until the time of the EPA inspection on June 26, 2007, Respondent routinely offered the waste aerosol cans, referred to in paragraphs 136-138 and 144, above, for transportation off-site to a local municipal solid waste disposal facility without completing and distributing a hazardous waste manifest for such shipments.

146. By failing to complete and distribute hazardous waste manifests for the shipments of discarded aerosol cans from its Facility to the local municipal solid waste disposal facility, from October 2004 until June 26, 2007, Respondent violated 25 Pa. Code §§ 262a.10 and 262a.20(a)(1).

COUNT X

(Offering Hazardous Waste to Unpermitted Treatment, Storage, or Disposal Facility)

147. The allegations in paragraphs 1 through 146, above, are incorporated herein by reference as though fully set forth at length.
148. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.12(c), which provides that “[a] generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.”
149. From October 2004 until June 26, 2007, Respondent routinely offered its discarded aerosol cans to a solid waste transporter and a municipal solid waste disposal facility.
150. From October 2004 until June 26, 2007, neither the solid waste transporter nor the disposal facility referred to in paragraph 149, above, had an EPA identification number.
151. By offering its discarded aerosol cans, between October 2004 and June 26, 2007, to a transporter and a disposal facility that did not have EPA identification numbers, Respondent violated 25 Pa. Code § 262a.10.

COUNT XI

(Failure to Offer Universal Waste Only to Another Universal Waste Handler)

152. The allegations in paragraphs 1 through 151, above, are incorporated herein by reference as though fully set forth at length.
153. 25 Pa. Code § 266b.1 incorporates by reference 40 C.F.R. § 273.18(a), which provides, in relevant part, that “[a] small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.”
154. Since at least October 2004, Respondent has been a “small quantity handler of universal waste” and a “generator” of universal waste “lamps” as these terms are defined in 40 C.F.R. § 273.9.
155. Respondent discarded and sent offsite for disposal approximately the number of universal waste “lamps” indicated in the table below:

YEAR	2004	2005	2006	2007
METAL HALIDE LAMPS	9	9	7	16
FLUORESCENT LAMPS	25	141	25	54

- 156. From October 2004 until June 26, 2007, Respondent sent the “lamps” referred to in paragraph 155, above, to a place other than a “universal waste handler,” a “destination facility,” or a “foreign destination,” as these terms are defined in 40 C.F.R. § 273.9.
- 157. By sending its discarded lamps to a party that was not a “universal waste handler,” a “destination facility,” or a “foreign destination” from October 2004 until June 26, 2007, Respondent violated 25 Pa. Code § 266b.1.

COUNT XII

(Failure to maintain LDR notifications)

- 158. The allegations in paragraphs 1 through 157, above, are incorporated herein by reference as though fully set forth at length.
- 159. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), “[a] generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40”
- 160. Hazardous wastes having Hazardous Waste Numbers D001, U149, F003, and U002, are prohibited from land disposal in accordance with 40 C.F.R. § 268.40.
- 161. Hazardous wastes generated at the Facility, as described in paragraphs 31 through 93, above, are prohibited from land disposal as provided in 40 C.F.R. § 268.40.
- 162. Between October 2004 and June 26, 2007, Respondent shipped land disposal restricted hazardous wastes, including D001, U149, F002, and U002, to a hazardous waste disposal facility on a monthly basis.
- 163. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a) (2001 ed.), provides, in relevant part:

(2) If the [hazardous] waste ... does not meet the treatment standard: [w]ith the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. ...

* * * *

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal.

- 164. As a generator that shipped land disposal restricted hazardous waste, Respondent was required, pursuant to 25 Pa. Code § 268a.1, to retain on-site a copy of all notices, as described in paragraph 163, above, for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal facilities.
- 165. At the time of the June 26, 2007 EPA Inspection, Respondent was not retaining on-site any notice, in accordance with 40 C.F.R. § 268.7(a)(8), pertaining to its off-site shipments of land disposal restricted hazardous wastes that occurred prior to January 12, 2007.
- 166. By failing to retain on-site copies of notices, in accordance with 40 C.F.R. § 268.7(a)8, pertaining to off-site shipments of land disposal restricted hazardous waste prior to January 12, 2007, Respondent violated 25 Pa. Code § 268a.1.

COUNT XIII

(Failure to Comply with LDR Storage Requirements)

- 167. The allegations in paragraphs 1 through 166, above, are incorporated herein by reference as though fully set forth at length.
- 168. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50 provides, in pertinent part with exceptions not relevant to this matter, that:
 - (a) ... the storage of hazardous wastes restricted from land disposal under subpart C of [40 C.F.R. Part 268] ... is prohibited, unless the following conditions are met:
 - (1) A generator stores such wastes in ... containers, ... and the generator complies with the requirements in [40 C.F.R.] § 262.34 and parts 264 and 265
- 169. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.9(c), .37, and .40, the hazardous wastes referred to in paragraphs 32, 35, 38, 41, 44, 49, 69, 72, 75, 78, 82, 84, 87, 92, and 136, above, are and were at the time of the violation alleged in this Count, prohibited from land disposal.
- 170. During the time when Respondent was storing the hazardous wastes referred to in paragraphs 32, 35, 38, 41, 44, 49, 69, 72, 75, 78, 82, 84, 87, 92, and 136, above, those wastes did not meet the treatment standards specified in 40 C.F.R. §§ 268.40 - .43, or the treatment standards specified under a variance issued pursuant to 40 C.F.R. § 268.44, nor were such wastes in compliance with applicable prohibitions specified in RCRA Section 3004, 42 U.S.C. § 6924.

171. As a generator of hazardous wastes that are prohibited from land disposal, Respondent has been prohibited from storing such wastes at the Facility since at least October 2004, unless it complied with the requirements in 40 C.F.R. § 262.34 and parts 264 and 265.
172. As described in paragraphs 55, 60, 66, 67, 90, 96, 103, 114, 117, 121, 124, 129, and 133, above, Respondent stored hazardous wastes that are restricted from land disposal without complying with the following requirements of 40 C.F.R. § 262.34 and parts 264 and 265: 1) clearly marking containers where visible for inspection with the date when hazardous waste accumulation began; 2) labeling containers with the words "Hazardous Waste;" 3) keeping containers closed in accordance with 40 C.F.R. §§ 264.173(a) and 265.173(a); 4) providing a containment system for central hazardous waste accumulation areas in accordance with 40 C.F.R. § 264.175 and 25 Pa. Code §§ 265a.175(a) and 265a.179; 5) conducting weekly inspections of hazardous waste storage areas, and preparing and maintaining records of such inspections, in accordance with 40 C.F.R. §§ 264.174 and .15, and 265.174; and 6) providing and documenting a hazardous waste training program in accordance with 40 C.F.R. §§ 264.16 and 265.16.
173. Respondent's storage of land disposal restricted waste from October 2004 to June 26, 2007 without complying with the requirements of 40 C.F.R. § 262.34 and parts 264 and 265 as described in paragraph 172, above, is a violation of 25 Pa. Code § 268a.1.

Civil Penalty

174. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a fully executed copy of this CAFO. Interest, administrative costs, and late payment penalties will be assessed as explained below for any portion of the civil penalty not paid by Respondent within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
175. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *RCRA Civil Penalty Policy* (June 2003) to determine the amount set forth in paragraph 174, above.
176. The civil penalty of Sixty-Five Thousand Dollars (\$65,000.00) assessed in paragraph 174, above, shall be paid in six (6) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$11,000.00 and

an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

- b. 2nd Payment: The second payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,733.70 and an interest payment of \$266.30, shall be paid within sixty (60) days on which this CAFO is mailed or hand-delivered to Respondent;
- c. 3rd Payment: The third payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,893.32 and an interest payment of \$106.68, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- d. 4th Payment: The fourth payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,920.18 and an interest payment of \$79.82, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- e. 5th Payment: The fifth payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,947.10 and an interest payment of \$52.90, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- f. 6th Payment: The sixth payment in the amount of Ten Thousand Five Hundred Thirty-One Dollars and Sixty Cents (\$10,531.60), consisting of a principal payment of \$10,505.70 and an interest payment of \$25.90, shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00) and total interest payments in the amount of Five Hundred Thirty-One Dollars and Sixty Cents (\$531.60).

- 177. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in paragraph 176, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late payment penalty charges as described in paragraphs 182 and 183, below, in the event of any such failure or default.
- 178. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in paragraph 176, above, Respondent may pay the

entire civil penalty of Sixty-Five Thousand Dollars (\$65,000.00) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in paragraph 181, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

179. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to paragraph 176, above, and/or the full penalty pursuant to paragraphs 177 or 178, above, and/or any administrative fees and late payment penalties, by cashier's check, certified check or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2010-0001;
- B. All checks shall be made payable to "**United States Treasury**";
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-G1
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

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

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

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

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

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

John Ruggero
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

180. 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 owned to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
181. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
182. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
183. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).
184. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO.

Other Applicable Laws

185. Nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

Reservation of Rights

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

Scope of Settlement

187. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

188. This CAFO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CAFO.

Effective Date

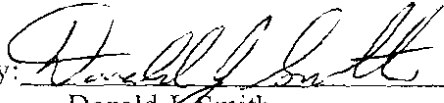
189. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or the Administrator's designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

190. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims 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 CAFO.

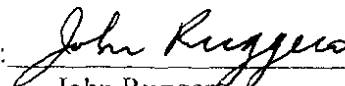
For Respondent:

Date: 10/16/09

By: 
Donald J. Smith
Combined Systems, Inc.


For Complainant:

Date: 10/26/09

By: 
John Ruggers
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 11/9/09

By: 
Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, PA 19103-2029**

In the Matter of:)	
)	
Combined Systems, Inc.)	Docket No. RCRA-03-2010-0001
98 Cuttermill Road, Ste 231)	
Great Neck, NY 11021)	FINAL ORDER
)	
Respondent)	
)	
Combined Systems, Inc. and)	
Combined Tactical Systems, Inc.)	Proceeding under Section 3008(a) and (g)
388 Kinsman Road)	of the Resource Conservation and
Jamestown, PA 16134)	Recovery Act, as amended, 42 U.S.C.
)	§ 6928(a) and (g)
Facility)	

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FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Combined Systems, Inc., have executed a document entitled "Consent Agreement" which I 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 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), **IT IS HEREBY ORDERED THAT** Respondent shall pay a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00), as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 11/24/09 By: Renée Sarajian
 Renée Sarajian
 Regional Judicial Officer

CERTIFICATE OF SERVICE


I hereby certify that, on the date noted below, I hand-delivered to the Regional Hearing Clerk, EPA Region III the original CONSENT AGREEMENT AND FINAL ORDER (CAFO) in *In the Matter of: Combined Systems, Inc.*, Docket No. RCRA-03-2010-0001, and the original memo from Ms. Marcia Mulkey and Mr. Abraham Ferdas transmitting the CAFO to the Regional Judicial Officer (RJO). In addition, I sent, to the following individual via the manner specified below, a true and correct copy of the CAFO with original signatures and a true and correct copy of the transmittal memo to the RJO:

FEDEX
OVERNIGHT DELIVERY:

Danielle E. Mettler, Esq.
Hiscock & Barclay LLP
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604

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Nov. 24, 2009
Date



John Ruggiero
Senior Assistant Regional Counsel
EPA Region III (3RC30)
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215-814-2142