

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

American Fuji Seal, Inc.
1051 Bloomfield Road
Bardstown, Kentucky 40004

EPA ID No.: KYD046655064

Respondent.

Docket No. RCRA-04-2018-4009(b)

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is American Fuji Seal, Inc., a corporation doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's facility located at 1051 Bloomfield Road, Bardstown, Kentucky 40004 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Kentucky Revised Statutes (KRS) § 224.46-012 et seq. and 401 Kentucky Administrative Regulations (KAR) Chapters 30 through 38, 43 and 44 (2006)¹.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. KRS § 224.46-510(1) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 401 KAR Chapter 32 (2006) [40 C.F.R. Part 262 (2016)].
12. KRS § 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 401 KAR Chapter 34 (2006) (permitted) and 401 KAR Chapter 35 (2006) (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status) (2016)].
13. Pursuant to 401 KAR 31:010 Section 2 (2006) [40 C.F.R. § 261.2 (2016)], a "waste" includes any discarded material that is not excluded by Section 4(1) of this administrative regulation or that is not excluded by variance granted under Section 1 or 2 of 401 K.A.R 30:080, or Section 8 or 9 of this administrative regulation.
14. Pursuant to 401 KAR 31:010 Section 3 (2006) [40 C.F.R. § 261.3 (2016)], a waste is a "hazardous waste" if it meets any of the criteria set forth in 401 KAR 31:010 Section 3(b) (2006)

¹ Kentucky's regulations were updated and reauthorized by EPA in 2019. However, at all times relevant to this CAFO, the prior versions of Kentucky's authorized regulations were applicable to Respondent. Accordingly, this CAFO will refer to the 2006 version of the State's authorized regulations and their federal analogs effective in 2016, prior to the effective date of the federal Generator Improvements Rule.

[40 C.F.R. § 261.3(a)(2) (2016)] and is not otherwise excluded from regulation as a hazardous waste by 401 KAR 31:010 Section 4 (2006) [40 C.F.R. § 261.4(b) (2016)].

15. Pursuant to 401 KAR 31:010 Section 3(b)1. (2006) and 401 KAR 31:030 Section 1 (2006) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20 (2016)], wastes that exhibit any of the characteristics identified in 401 KAR 31:030 Sections 2-5 (2006) [40 C.F.R. §§ 261.21-24 (2016)] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to 401 KAR 31:030 Sections 1 and 2 (2006) [40 C.F.R. §§ 261.20 and 261.21 (2016)], a waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 401 KAR 31:030 Sections 1 and 3 (2006) [40 C.F.R. §§ 261.20 and 261.22 (2016)], a waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
18. Pursuant to 401 KAR 31:030 Sections 1 and 5 (2006) [40 C.F.R. §§ 261.20 and 261.24 (2016)], a waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 401 KAR 31:030 Section 5 (2006) [40 C.F.R. § 261.24 (2016)], a waste that exhibits the characteristic of toxicity for Arsenic is identified with the EPA Hazardous Waste Number D004.
19. Pursuant to 401 KAR 31:030 Sections 1 and 5 (2006) [40 C.F.R. §§ 261.20 and 261.24 (2016)], a waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 401 KAR 31:030 Section 5 (2006) [40 C.F.R. § 261.24 (2016)], a waste that exhibits the characteristic of toxicity for Cadmium is identified with the EPA Hazardous Waste Number D006.
20. Pursuant to 401 KAR 31:030 Sections 1 and 5 (2006) [40 C.F.R. §§ 261.20 and 261.24 (2016)], a waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 401 KAR 31:030 Section 5 (2006) [40 C.F.R. § 261.24 (2016)], a waste that exhibits the characteristic of toxicity for Chromium is identified with the EPA Hazardous Waste Number D007.
21. Pursuant to 401 KAR 31:030 Sections 1 and 5 (2006) [40 C.F.R. §§ 261.20 and 261.24 (2016)], a waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 401 KAR 31:030 Section 5 (2006) [40 C.F.R. § 261.24 (2016)], a waste that exhibits the characteristic of toxicity for Lead is identified with the EPA Hazardous Waste Number D008.
22. Pursuant to 401 KAR 31:030 Sections 1 and 5 (2006) [40 C.F.R. §§ 261.20 and 261.24 (2016)], a waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 401 KAR 31:030 Section 5 (2006) [40 C.F.R. § 261.24 (2016)], a waste that exhibits

the characteristic of toxicity for methyl ethyl ketone is identified with the EPA Hazardous Waste Number D035.

23. Pursuant to 401 KAR 31:010 Section 3(b)2 (2006) and 401 KAR 31:040 Section 1(2006) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30 (2016)], a waste, as identified in Section 2 of this administrative regulation is a hazardous waste if it meets any of the following criteria: it is listed in 401 KAR 31:040 (2006) and has not been excluded.
24. Pursuant to 401 KAR 31:040 Section 2 (2006) [40 C.F.R. § 261.31 (2016)], solid wastes generated from non-specific manufacturing sources are listed hazardous wastes and are identified with the EPA Hazardous Waste Nos. F001 through F039.
25. Pursuant to 401 KAR 31:040 Section 2 (2006) [40 C.F.R. § 261.31 (2016)], the following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures are identified with the EPA Hazardous Waste Number F003.
26. Pursuant to 401 KAR 31:040 Section 2 (2006) [40 C.F.R. § 261.31 (2016)], wastewater treatment sludge from non-specified electroplating operations are listed hazardous wastes and are identified with the EPA Hazardous Waste Number F006.
27. Pursuant to 401 KAR 31:005 Section 1(45) (2006), [40 C.F.R. § 260.10 (2016)], a “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
28. Pursuant to 401 KAR 31:005 Section 1(66) (2006), [40 C.F.R. § 260.10 (2016)], “disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
29. Pursuant to 401 KAR 31:005 Section 1(93)(a) (2006) [40 C.F.R. § 260.10 (2016)], “facility” means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
30. Pursuant to 401 KAR 31:005 Section 1(111) (2006) [40 C.F.R. § 260.10 (2016)], “generator” means any person, by site, whose act or process produces waste.
31. Pursuant to 401 KAR 30:005 Section 1(194) (2006) [40 C.F.R. § 260.10 (2016)], “owner” means the person who owns an on-site or off-site waste facility, or any part of a facility.
32. Pursuant to 401 KAR 30:005 Section 1(19) (2006) [40 C.F.R. § 260.10 (2016)], “operator” means the person responsible for the overall operation of a facility.
33. Pursuant to 401 KAR 31:005 Section 1(203) (2006) which references KRS 224.01-010 (2006) [40 C.F.R. § 260.10 (2016)], “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state

agency, city, commission, political subdivision of the Commonwealth of Kentucky, or any interstate body.

34. Pursuant to 401 KAR 31:005 Section 1(264) (2006) [40 C.F.R. § 260.10 (2016)], “storage” means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.
35. Pursuant to 401 KAR 31:005 Section 1(273) (2006) [40 C.F.R. § 260.10 (2016)], “tank” means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of non-earthen materials which provide structural support and which does not meet the definition of any other unit.
36. Pursuant to 401 KAR 31:005 Section 1(274) (2006) [40 C.F.R. § 260.10 (2016)], “tank system” means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
37. Pursuant to 401 KAR 31:005 Section 1(287) (2006) [40 C.F.R. § 260.10 (2016)], “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous. (See KRS § 224.01-010(30) (2006)).
38. Pursuant to KRS 224.46-510(2) (2006) and 401 KAR 31:010 Section 2 (2006) [40 C.F.R. § 262.11 (2016)], a person who generates a waste, as defined in 401 KAR 31:010 Section 2 (2006) [40 C.F.R. § 261.2 (2016)], must determine if that waste is a hazardous waste following the methods articulated in KRS 224.46-510(2) (2006) and 401 KAR 31:010 Section 2 (2006) [40 C.F.R. § 262.11 (2016)].
39. Pursuant to 401 KAR 32:010 Section 3(4), hazardous waste generation and on-site management of hazardous waste shall be consistent with registration. Any changes in waste streams, on-site management methods, or other information submitted on the registration form requires the generator to submit a modified registration form.
40. Pursuant to 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, as required by KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the management requirements listed in 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).
41. Pursuant to 401 KAR 32:030 Section 5(1)(a)1. (2006) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates 401 KAR 35:180 Section 4(1) (2006) [40 C.F.R. § 265.173(a) (2016)] which is a condition of the LQG Permit Exemption, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
42. Pursuant to 401 KAR 32:030 Section 5(1)(a)1. (2006) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates 401 KAR 35:180 Section 5 (2006) [40 C.F.R. § 265.174 (2016)], and is a

condition of the LQG Permit Exemption, the generator must inspect areas where container are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system cause by corrosion or other factors.

43. Pursuant to 401 KAR 32:030 Section 5(1)(a)1. (2006) [40 C.F.R. § 262.34(a)(1)(i) and (ii)], which incorporates 401 KAR 35:180 Section 8 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. Part 265, Subpart CC], and is a condition of the LQG Permit Exemption, an owner or operator who treats, stores, or disposes of hazardous waste containing an average volatile organic concentration greater than 500 parts per million by weight (ppmw) at the point of waste origination in surface impoundments, tanks, miscellaneous units, or containers must meet the organic air emission standards, as required by 401 KAR 35:281 [40 C.F.R. Part 265, Subpart CC] (“Subpart CC”).
44. Pursuant to 401 KAR 32:030 Section 5(1)(a)1. (2006) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates 401 KAR 35:180 Section 8 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1087(c)(3) (2016)], and is a condition of the LQG Permit Exemption, the generator controlling air pollutant emissions from a container subject to Subpart CC, Container Level 1 Controls, must install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position.
45. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)] which incorporates 401 KAR 35:190 Section 3(1) (2006) [40 C.F.R. § 265.192(a)], and is a condition of the LQG Permit Exemption, generators of new tank systems or components shall obtain and submit to the cabinet, a written assessment, reviewed and certified by an engineer, in accordance with 401 KAR 38:070 Section 7(4) attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.
46. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)] which incorporates 401 KAR 35:190 Section 3(7) (2006) [40 C.F.R. § 265.192(g)], and is a condition of the LQG Permit Exemption, generators of new tank systems or components obtain and keep on file at the facility written statements by those person required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirement of subsection (2) to (6) of this section that attest that the tank system was properly designed and installed and that repairs, pursuant to subsection (2) and (4) of this section were performed.
47. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)] which incorporates 401 KAR 35:190 Section 4 (2006) [40 C.F.R. § 265.193(a)], and is a condition of the LQG Permit Exemption, in order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided.
48. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)] which incorporates 401 KAR 35:190 Section 6 (2006) [40 C.F.R. § 265.195(a)], and is a condition of the LQG Permit Exemption, the owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

49. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)] which incorporates 401 KAR 35:190 Section 6 (2006) [40 C.F.R. § 265.195(b)], and is a condition of the LQG Permit Exemption, the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste; (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment structures (such as dikes) to detect erosion or signs of releases of hazardous waste (such as wet spots or dead vegetation).
50. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. Part 265, Subpart BB], and is a condition of the LQG Permit Exemption, a generator who treats, stores, or disposes of hazardous waste with organic concentrations of at least ten percent by weight must comply with the organic air emission standards for equipment leaks, as required by 401 KAR 35:280 Section 3 (2006) [40 C.F.R. Part 265, Subpart BB] (“Subpart BB”).
51. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:280 Section 3 (2006) [40 C.F.R. § 265.1050(c) (2016)], and is a condition of the LQG Permit Exemption, each piece of equipment subject to Subpart BB is required to be marked in such a manner that each component can be distinguished readily from other pieces of equipment.
52. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:280 Section 3 (2006) [40 C.F.R. § 265.1052(a)(1) (2016)], and is a condition of the LQG Permit Exemption, each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in 401 KAR 35:280 Section 14 [40 C.F.R. § 265.1063(b) (2016)].
53. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:280 Section 8 (2006) [40 C.F.R. § 265.1057(a) (2016)], and is a condition of the LQG Permit Exemption, each valve in light liquid service shall be monitored monthly to detect leaks by the methods specified in 401 KAR 35:280 Section 14 [40 C.F.R. § 265.1063(b) (2016)] and shall comply with paragraphs (b) through (e) of this section.
54. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates of 401 KAR 35:280 Section 15 (2006) [40 C.F.R. § 265.1064(a) (2016)], and is a condition of the LQG Permit Exemption, the generator must maintain a list of equipment identification numbers, type of equipment, test results, and subject regulatory requirements for each piece of equipment that is subject to Subpart BB.
55. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(b)(1) (2016)], and is a condition of the LQG Permit Exemption, the generator shall determine the applicable air pollutant emissions controls for each tank subject to this section in accordance with the requirements.
56. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40

C.F.R. § 265.1085(c)(1) (2016)], and is a condition of the LQG Permit Exemption, a generator controlling air pollutant emissions from a tank using Tank Level 1 Controls, shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank before the first time the hazardous waste is placed in the tank.

57. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(2) (2016)], and is a condition of the LQG Permit Exemption, the generator controlling air pollutant emissions from a tank subject to Subpart CC, Tank Level 1 Controls, shall equip the tank with a fixed roof that is designed according to the requirements.
58. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(3) (2016)], and is a condition of the LQG Permit Exemption, a generator controlling air pollutant emissions from a tank using Tank Level 1 Controls, shall ensure that whenever hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position.
59. Pursuant to 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], which incorporates 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(4) (2016)], and is a condition of the LQG Permit Exemption, the owner or operator controlling air pollutant emissions from a tank subject to Subpart CC, Tank Level 1 Controls, is required to inspect the fixed roof and its closure devices for defects that could result in air pollutant emissions.
60. Pursuant to 401 KAR 32:030 Section 5(1)(b) (2006) [40 C.F.R. § 262.34(a)(2) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.
61. Pursuant to 401 KAR 32:030 Section 5(1)(c) (2006) [40 C.F.R. § 262.34(a)(3) (2016)], which is a condition of the LQG Permit Exemption, while accumulating on-site, each container and tank shall be labeled or marked clearly with the words "Hazardous Waste."
62. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:020 Section 7(3) (2006) [40 C.F.R. § 265.16(c) (2016)], which is a condition of the LQG Permit Exemption, facility personnel shall take part in an annual review of the initial training required in subsection (1) of this section.
63. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:030 Section 2 (2006) [40 C.F.R. § 265.31 (2016)], and is a condition of the LQG Permit Exemption, a generator is required to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
64. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:030 Section 3(2) [40 C.F.R. § 265.32(b)], and is a condition of the LQG Permit Exemption, all facilities must be equipped with a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio capable of

summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

65. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:030 Section 3(3) [40 C.F.R. § 265.32(c)], and is a condition of the LQG Permit Exemption, all facilities must be equipped with spill control equipment and decontamination equipment.
66. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:030 Section 6 (2006) [40 C.F.R. § 265.35 (2016)], and is a condition of the LQG Permit Exemption, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
67. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:040 Section 3(4) (2006) [40 C.F.R. § 265.52(d) (2016)], and is a condition of the LQG Permit Exemption, each generator must have a contingency plan for his facility. The contingency plan must include a list of names, addresses, and phone numbers (office and home) of all person qualified to act as emergency coordinator, among other things, and must be kept up to date.
68. Pursuant to 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 401 KAR 35:040 Section 4(2) (2006) [40 C.F.R. § 265.53(b) (2016)], and is a condition of the LQG Permit Exemption, the contingency plan must be submitted to all local police department, fire department, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
69. Pursuant to 401 KAR 32:030 Section 5(3)(a) (2006) [40 C.F.R. § 262.34(c)(1) (2016)], a generator may accumulate as much as 55 gallons of hazardous waste at or near the 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 without having interim status as required by KRS § 224.46-520 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a) (2016)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(c)(1)(i)-(ii) (2016)] (hereinafter referred to as the “SAA Permit Exemption”).
70. Pursuant to 401 KAR 32:030 Section 5(3)(a)1. (2006) [40 C.F.R. § 262.34(c)(1)(i) (2016)] which incorporates 401 KAR 35:180 Section 4(1) (2006) [40 C.F.R. § 265.173(a) (2016)], and is a condition of the SAA Permit Exemption, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
71. Pursuant to 401 KAR 32:030 Section 5(3)(a)2. (2006) [40 C.F.R. § 262.34(c)(1)(ii) (2016)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers with the words “Hazardous Waste.”
72. Pursuant to 401 KAR 43:005 Section 1(254) (2006) [40 C.F.R. § 273.9 (2016)], a “Small Quantity Handler of Universal Waste.” (SQHUW) is a universal waste handler who does not

accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

73. Pursuant to 401 KAR 43:020 Section 5(1) (2006) [40 C.F.R. § 273.14(a) (2016)], a SQHUW shall label or mark the universal waste batteries (that is, each battery), or a container in which the batteries are contained, shall be labeled or marked clearly with the following phrase: “Universal Waste – Battery(ies).”
74. Pursuant to 401 KAR 43:020 Section 6(3) (2006) [40 C.F.R. § 273.15(c) (2016)], a SQHUW who accumulates universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

IV. FINDINGS OF FACTS

75. The Respondent prints labels for consumer products at 1051 Bloomfield Road, Bardstown, Kentucky 40004.
76. The Respondent submitted a 2015 annual report on February 18, 2016. The Respondent has determined that in 2015 it generated hazardous wastes bearing the waste codes D001, D002, D005, D006, D007, D008, D011, D018, D035, F003, and F005.
77. The Respondent submitted a 2016-2017 Notification of Hazardous Waste Activity. The Respondent has determined that in 2016 it generated D001, D002, D005, D006, D007, D008, D011, D018, D035, F003, and F005 hazardous wastes.
78. The Respondent is a generator of 1,000 kilograms or greater of hazardous waste in a calendar month and is therefore an LQG of hazardous waste.
79. The Respondent treats and stores hazardous waste in containers and tanks.
80. On November 14-15, 2016, the EPA and the Kentucky Department for Environmental Protection (KYDEP) conducted a compliance evaluation inspection (CEI) at Respondent’s facility. The EPA’s findings of the CEI were documented in a Report mailed to Respondent, dated February 27, 2017.
81. At the time of the CEI, the inspectors observed that the Respondent failed to conduct hazardous waste determinations on three waste streams, including waste solvent wipes stored in the Flexo Wash Room, waste personal protective equipment stored in the PRI Rinse Room, and liquid waste stored in the pit in the Engraving Area.
82. At the time of the CEI, the inspectors observed that four waste profiles had not been registered with KDEP, including solvent waste in the Black Tank (D001, F003), the waste lead (D008), the waste ammonium (D002), and the waste hydrochloric acid (D002).
83. At the time of the CEI, the inspectors observed that the Respondent failed to ensure the Flexo Tank and the Dirty Tank did not store hazardous waste for greater than 90 days.
84. At the time of the CEI, the inspectors observed that the Respondent failed to close a container in the Renzman Room area and four containers in the Press Ready area.

85. At the time of the CEI, the inspectors observed the Respondent failed to conduct weekly inspections at Press Room and Press Ready areas.
86. At the time of the CEI, the inspectors observed one 55-gallon metal container next to the Black Tank storing solvent waste (D001, F003), which did not have a lid or closure device secured in the closed position.
87. At the time of the CEI, the inspectors observed that the Respondent failed to obtain, submit and maintain onsite a written assessment(s) certified by an engineer attesting that the Flexo Tank, the Dirty Tank, and the Black Tank have sufficient structural integrity and are acceptable for storing and treating of hazardous waste.
88. At the time of the CEI, the inspectors observed that the Respondent failed to provide secondary containment or failed to provide adequate secondary containment for the Flexo Tank, the Dirty Tank, the Acid Tank, and the Black Tank.
89. At the time of the CEI, the inspectors observed that the Respondent failed to conduct daily inspections of the Flexo Tank and the Dirty Tank.
90. At the time of the CEI, the inspectors observed that the Respondent failed to mark equipment subject to 40 C.F.R. Part 265, Subpart BB in such a manner that it could be distinguished readily from other pieces of equipment.
91. At the time of the CEI, the inspectors observed that the Respondent failed to monitor all pumps subject to 40 C.F.R. Part 265, Subpart BB to detect leaks monthly.
92. At the time of the CEI, the inspectors observed that the Respondent failed to monitor all valves subject to 40 C.F.R. Part 265, Subpart BB to detect leaks monthly.
93. At the time of the CEI, the inspectors observed that the Respondent failed to maintain 40 C.F.R. Part 265, Subpart BB records.
94. At the time of the CEI, the inspectors observed that the Respondent failed to determine the applicable air pollutant emissions controls for the Flexo Tank, the Dirty Tank, and the Black Tank.
95. At the time of the CEI, the inspectors observed that the Respondent failed to determine the maximum organic vapor pressure of the hazardous wastes managed in the Flexo Tank, the Dirty Tank, and the Black Tank.
96. At the time of the CEI, the inspectors observed that the Respondent failed to equip the Flexo Tank with a fixed roof and closure device.
97. At the time of the CEI, the inspectors observed that the Respondent failed to secure closure devices on tanks subject to 40 C.F.R. Part 265, Subpart CC in the following ways:
 - a. The Dirty Tank was vented to the atmosphere with an open-ended pipe. There was no closure device secured in the closed position on this pipe.
 - b. The Black Tank was observed to have a hole in the top of the fixed roof where a 4-inch diameter overflow hose drained into a 55-gallon metal container beside the tank. There were

gaps around this overflow hose. The open-ended overflow hose was not secured with a closure device in the closed position.

98. At the time of the CEI, the inspectors observed that the Respondent failed to inspect or maintain records for the fixed roofs and closure devices on the Flexo Tank, the Dirty Tank, and the Black Tank in accordance with the 40 C.F.R. Part 265, Subpart CC requirements.
99. At the time of the CEI, the inspectors observed that the Respondent failed to label three containers in the Press Room area, one container in the 90-day or less hazardous waste storage area, one container next to the Black Tank, and four containers in the Press Ready area with accumulation start dates.
100. At the time of the CEI, the inspectors observed that Respondent failed to label the Flexo Tank and the Dirty Tank with the words "Hazardous Waste."
101. At the time of the CEI, the inspectors observed that the Respondent failed to provide an employee with an annual refresher training of his initial training.
102. At the time of the CEI, the inspectors observed that the Respondent failed to remediate spills/releases of hazardous waste (D001, F003) on the floor near the container with a filter insert used to accumulate mop water in the PRI Room.
103. At the time of the CEI, the inspectors observed that the Respondent failed to provide communication devices near the Press Room area, the 90-day or less hazardous waste storage area, and the Press Ready area.
104. At the time of the CEI, the inspectors observed that the Respondent failed to provide spill control equipment and decontamination equipment near the Press Room area, the 90-day or less hazardous waste storage area, and the Press Ready area.
105. At the time of the CEI, the inspectors observed that the Respondent failed to provide aisle space between the rows of containers of hazardous waste in the 90-day or less hazardous waste storage area to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to the area in an emergency.
106. At the time of the CEI, the inspectors reviewed the contingency plan and noted that there were no home addresses for the emergency coordinators.
107. At the time of the CEI, the inspectors noted that the Respondent failed to submit copies of the contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
108. At the time of the CEI, the inspectors observed that the Respondent failed to close four containers in the Press Room SAA, three containers in the PRI Room SAA, three containers in the Offset Printing Area SAA, one container in Flexo Printing SAA, two containers in Cylinder Engraving SAA, and one container in Spare Parts SAA.
109. At the time of the CEI, the inspectors observed that the Respondent failed to label or mark fifty-three containers in the Press Room SAA, three containers in the PRI Room SAA, two containers in the Offset Printing Area SAA, and three containers in Cylinder Engraving SAA that were not

labeled with the words “Hazardous Waste” or with other words that identify the contents of the containers.

110. At the time of the CEI, the inspectors observed that the Respondent had failed to label a 1-gallon container of lithium batteries with the words “Universal Waste – Battery(ies).”
111. At the time of the CEI, the inspectors observed that the Respondent failed to demonstrate the length of time that a 1-gallon container of lithium batteries, and one 4-foot box of universal waste lamps had been accumulated.

V. ALLEGED VIOLATIONS

112. Respondent is a “person” as defined in 401 KAR 31:005 Section 1(22) (2006) (See KRS § 224.01-010(17)).
113. Respondent is the “owner/operator” of a “facility” located in Bardstown, Kentucky, as those terms are defined in 401 KAR 31:005 Section 1(20 and 19) (2006) and 401 KAR 31:005 Section 1(93)(a) (2006) [40 C.F.R. § 260.10].
114. Respondent is a “generator” of “hazardous waste” as those terms are defined in 401 KAR 31:005 Section 1(111) (2006) (See KRS § 224.01-010(13)) and 401 KAR 31:010 Section 3 (2006) [40 C.F.R. § 261.3].
115. Respondent, as a result of its practices and operations at the Facility, is an LQG, as that term is defined in 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a) (2016)], at all times relevant to this CAFO.
116. Respondent, as a result of its practices and operations at the Facility, is a SQHUW, as that term is defined in 401 KAR 43:005 Section 1(254) (2006) [40 C.F.R. § 273.9], at all times relevant to this CAFO.
117. Respondent failed to conduct hazardous waste determinations for three waste streams. The EPA therefore alleges Respondent violated 401 KAR 32:010 Section 2 (2006) [40 C.F.R. § 262.11 (2016)].
118. Respondent failed to register three waste streams with KDEP. The EPA therefore alleges Respondent violated 401 KAR 32:010 Section 3(4).
119. Respondent failed to ensure the Flexo Tank and the Dirty Tank did not store hazardous waste beyond 90 days. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925], by storing hazardous waste without a permit or interim status, because Respondent failed to ensure that tanks managing hazardous waste were emptied every 90 days, as required by 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a) (2016)] which is a condition of the LQG Permit Exemption.
120. Respondent failed to keep containers of hazardous waste closed. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)(1) (2006)

[40 C.F.R. § 262.34(a)(1)(i)], by not complying with the container management requirements of 401 KAR 35:180 Section 4(1) (2006) [40 C.F.R. § 265.173(a) (2016)].

121. Respondent failed to inspect containers of hazardous waste at least weekly. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)(1) (2006) [40 C.F.R. § 262.34(a)(1)(i) (2016)], by not complying with the inspection requirements of 401 KAR 35:180 Section 5 (2006) [40 C.F.R. § 265.174 (2016)].
122. Respondent failed to keep a closure device secured in the closed position on a container that was subject to 40 C.F.R. Part 265, Subpart CC. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)1. (2006) [40 C.F.R. § 262.34(a)(1)(i) (2016)], by not meeting the container management requirements of 401 KAR 35:281 (2006) [40 C.F.R. § 265.1087(c)(3) (2016)].
123. Respondent failed to obtain, submit to the cabinet, and maintain a record of a written assessment, reviewed and certified by an engineer, attesting that the Flexo Tank, the Dirty Tank, and the Black Tank have sufficient structural integrity to manage hazardous waste. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the tank certification requirements of 401 KAR 35:190 Section 3(1) and (7) (2006) [40 C.F.R. § 265.192(a) and (g)].
124. Respondent failed to provide adequate secondary containment for the Flexo Tank, the Dirty Tank, the Acid Tank, and the Black Tank. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the tank standards of 401 KAR 35:190 Section 4 (2006) [40 C.F.R. § 265.193(a)].
125. Respondent failed to conduct daily inspections at the Flexo Tank, the Dirty Tank, and the Black Tank. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the tank standards of 401 KAR 35:190 Section 6 (2006) [40 C.F.R. § 265.195(a-b)].
126. Respondent failed to mark equipment subject to 40 C.F.R. Part 265, Subpart BB. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the organic air emission standards of 401 KAR 35:280 Section 3 (2006) [40 C.F.R. § 265.1050(c) (2016)].

127. Respondent failed to monitor all pumps in light liquid service subject to 40 C.F.R. Part 265, Subpart BB. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the organic air emission standards of 401 KAR 35:280 Section 3 (2006) [40 C.F.R. § 265.1052(a)(1) (2016)].
128. Respondent failed to monitor all valves in light liquid service subject to 40 C.F.R. Part 265, Subpart BB. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not complying with the organic air emission standards 401 KAR 35:280 Section 3 (2006) [40 C.F.R. § 265.1057(a) (2016)].
129. Respondent failed to keep 40 C.F.R. Part 265, Subpart BB monitoring records. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not keeping the monitoring records in accordance with 401 KAR 35:280 Section 15 (2006) [40 C.F.R. § 265.1064(a) (2016)].
130. Respondent failed to determine the applicable air pollutant emissions controls for each tank subject to the 40 C.F.R. Part 265, Subpart CC requirements. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not controlling air pollutant emissions from tanks in accordance with the Tank Level 1 Controls specified in 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(b)(1) (2016)].
131. Respondent failed to determine maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 Controls before the first time the hazardous waste is placed in the tank. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not controlling air pollutant emissions from tanks in accordance with the Tank Level 1 Controls specified in 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(1) (2016)].
132. Respondent failed to equip the tank, subject to 40 C.F.R. Part 265, Subpart CC, Tank Level 1 Controls, with a fixed roof that is designed according to the requirements. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not controlling air pollutant emissions from tanks in accordance with the Tank Level 1 Controls specified in 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(2) (2016)].

133. Respondent failed to ensure the fixed roof was installed with each closure device secured in the closed position. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not controlling air pollutant emissions from tanks in accordance with the 40 C.F.R. Part 265, Subpart CC, Tank Level 1 Controls specified in 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(3) (2016)].
134. Respondent failed to inspect the fixed roof and its closure devices, on tank(s) subject to 40 C.F.R. Part 265, Subpart CC, Tank Level 1 Controls, for defects that could result in air pollutant emissions. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth 401 KAR 32:030 Section 5(1)(a)2. (2006) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not controlling air pollutant emissions from tanks in accordance with the Tank Level 1 Controls specified in 401 KAR 35:190 (2006), which incorporates 401 KAR 35:281 (2006) [40 C.F.R. § 265.1085(c)(4) (2016)].
135. Respondent failed to label nine containers with their accumulation start dates. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of 401 KAR 32:030 Section 5(1)(b) (2006) [40 C.F.R. § 262.34(a)(2) (2016)].
136. Respondent failed to inspect containers of hazardous waste at least weekly. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the inspection requirements in 401 KAR 32:030 Section 5(1)(c) (2006) [40 C.F.R. § 262.34(a)(3) (2016)].
137. Respondent failed to annually train one employee. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the training requirements of 401 KAR 35:020 Section 7(3) (2006) [40 C.F.R. § 265.16(c) (2016)].
138. Respondent failed to operate its facility in a such a way to prevent release of hazardous waste, fire and explosion. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the facility management requirements of 401 KAR 35:030 Section 2 (2006) [40 C.F.R. § 265.31 (2016)].
139. Respondent failed to provide a device, such as a telephone or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state and local emergency response teams for three locations at the facility. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a

condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not providing communications equipment as required in 401 KAR 35:030 Section 3(2) [40 C.F.R. § 265.32(b)].

140. Respondent failed to provide spill control equipment and decontamination equipment for three locations at the facility. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not providing spill control and decontamination equipment as required in 401 KAR 35:030 Section 3(3) (2006) [40 C.F.R. § 265.32(c) (2016)].
141. Respondent failed to provide adequate aisle space for one location at the facility. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the aisle space requirements of 401 KAR 35:030 Section 6 (2006) [40 C.F.R. § 265.35 (2016)].
142. Respondent failed to provide home addresses of emergency coordinators in the contingency plan. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the contingency plan requirements of 401 KAR 35:040 Section 3(4) (2006) [(40 C.F.R. § 265.52(d) (2016)].
143. Respondent failed to provide copies of the contingency plan to the local authorities. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4) (2016)], by failing to provide contingency plan copies to the local authorities as required by 401 KAR 35:040 Section 4(2) (2006) [40 C.F.R. § 265.53(b) (2016)].
144. Respondent failed to keep fourteen containers accumulating hazardous waste in SAAs closed. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in 401 KAR 32:030 Section 5(3)(a)1. (2006) [40 C.F.R. § 262.34(c)(1)(i) (2016)], by failing to comply with the container management standards of 401 KAR 35:180 Section 4(1) (2006) [40 C.F.R. § 265.173(a) (2016)].
145. Respondent failed to label sixty-one containers accumulating hazardous waste in SAAs with the words “Hazardous Waste” or with other words to identify the contents of the containers. The EPA therefore alleges Respondent violated KRS 224.46-520(1) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of 401 KAR 32:030 Section 5(3)(a)2. (2006) [40 C.F.R. § 262.34(c)(1)(ii) (2016)].

146. Respondent failed to label a container of universal waste batteries with the words “Universal Waste – Battery(ies)”. The EPA therefore alleges Respondent violated 401 KAR 43:020 Section 5(1) (2006) [40 C.F.R. § 273.14(a) (2016)], by failing to label or mark each universal waste battery or container or tank in which the batteries are contained clearly with the words “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”
147. Respondent was unable to demonstrate the length of time the that universal waste had been accumulated from the date it became a waste. The EPA therefore alleges Respondent violated 401 KAR 43:020 Section 6(3) (2006) [40 C.F.R. § 273.15(c) (2016)], by failing to demonstrate the length of time that the facility’s universal waste had been accumulated from the date that the universal waste became a waste or was received.

VI. STIPULATIONS

148. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
149. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - f. waives its rights to appeal the Final Order accompanying this CAFO.
150. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
 - d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;

- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
 - f. agrees to comply with the terms of this CAFO.
151. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.
152. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

153. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **ONE HUNDRED AND FORTY-NINE THOUSAND DOLLARS (\$149,000.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
154. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.
- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York

ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

155. Respondent shall send proof of **payment**, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Alan Newman
RCRA Enforcement Section
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
newman.alan@epa.gov

156. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and “Docket No. **RCRA-04-2018-4009(b)**.”

157. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the

delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
- b. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

158. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

159. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

160. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

161. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
162. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
163. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
164. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
165. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
166. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
167. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
168. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
169. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
170. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
171. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
172. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was

materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

173. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
174. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

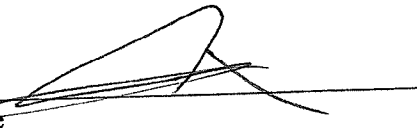
175. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement In the Matter of **American Fuji Seal, Inc.**, Docket No. **RCRA-04-2018-4009(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date 7/13/2021
Printed Name: AKIKAZU YADA
Title: President
Address: 1051 Bloomfield Road, Bardstown, KY 40004

The foregoing Consent Agreement In the Matter of **American Fuji Seal, Inc.**, Docket No. **RCRA-04-2018-4009(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Kimberly L. Bingham
Chief
Chemical Safety and Land Enforcement Branch
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

American Fuji Seal, Inc.
1051 Bloomfield Road
Bardstown, Kentucky 40004

EPA ID No.: KYD046655064

Respondent.

Docket No. RCRA-04-2018-4009(b)

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **American Fuji Seal, Inc.**, Docket No. **RCRA-04-2018-4009(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Gregory T Dutton
Frost Brown Todd LLC
gdutton@fbtlaw.com
400 West Market Street, Suite 3200
Louisville, Kentucky 40202-3363
(502) 779-8557

Dennis Conniff
Frost Brown Todd LLC
dconniff@fbtlaw.com
400 West Market Street, Suite 3200
Louisville, Kentucky 40202-3363
(502) 568-0398

To EPA: Alan Newman, Environmental Engineer
newman.alan@epa.gov
(404) 562-8594

Joan Redleaf Durbin, Senior Attorney
redleaf-durbin.joan@epa.gov
(404) 562-9544

U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Shannon L. Richardson,
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960