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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 DALLAS, TEXAS REGIONAL HEARING CLERK EPA REGION VI

IN THE MATTER OF:

UOP LLC
Baton Rouge, Louisiana

EPA I.D. NO. LAD985170760

Respondent

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DOCKET NO. RCRA-06-2013-0906

Complaint, Consent Agreement,
and Final Order

COMPLAINT, CONSENT AGREEMENT, AND FINAL ORDER

The Complainant, the Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), issues this Complaint to UOP LLC (Respondent) and simultaneously enters into the Consent Agreement and Final Order (CAFO) in resolution of the above captioned case with the Respondent pursuant to 40 CFR Part 22.

I. STATEMENT OF AUTHORITY

This Complaint is issued pursuant to Section 3008(a) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). Section 3008(a) of RCRA authorizes the Administrator of the EPA to issue a complaint whenever the Administrator has information that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. § 6928.

The requirements of Subtitle C include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On February 7, 1985, the State of Louisiana received final authorization for its base RCRA program, and there have been subsequent authorized revisions to said base program. The Louisiana Department of Environmental Quality (LDEQ) is the designated State Agency responsible for carrying out the Louisiana RCRA Program.

The Director, Compliance Assurance and Enforcement Division, U.S. EPA, Region 6, has been delegated authority to issue complaints of this type in the State of Louisiana.

## **II. NOTICE TO THE STATE**

Notice of the commencement of this action has been given to the State of Louisiana, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **III. STATEMENTS OF FACT AND CONCLUSIONS OF LAW**

- 1) UOP LLC (UOP), a wholly-owned indirect subsidiary of Honeywell International Inc., is the Respondent.
- 2) UOP is incorporated in the State of Delaware and is authorized to do business in the State of Louisiana.
- 3) The registered agent for UOP is Corporation Service Company located at 320 Somerulos Street, Baton Rouge, Louisiana 70802.
- 4) UOP is a "person" within the meaning of LAC 33:V.109, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
- 5) UOP owns and operates a facility ("UOP facility") located at 1200 Airline Highway, Baton Rouge, LA 70805.
- 6) The UOP facility produces activated alumina and precipitated alumina.
- 7) Within the meaning of LAC 33:V.109 and 40 C.F.R. § 260.10, UOP is the owner and operator of a "facility."
- 8) Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about March 1, 2004, Respondent filed a Notification of Hazardous Waste Activity ("3010 Notification") with EPA.
- 9) In the 3010 Notification, Respondent identified itself as a Large Quantity Generator of hazardous wastes, including generation of hazardous wastes, including D001, D002, D009, D018, D039, and D040 wastes.
- 10) UOP by act or process produces hazardous waste at the UOP facility and, as such, is a generator within the meaning of LAC 33:V.109 and 40 C.F.R. § 260.10.
- 11) EPA, Region 6 and the State of Louisiana, conducted a joint RCRA Compliance Evaluation Inspection ("Inspection") at the UOP facility in Baton Rouge, Louisiana on April 29 and 30, 2008, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.
- 12) During the Inspection, Phillip Addy and Keith Miller, Site Leader and HSE leader for Respondent accompanied the EPA inspector.

- 13) Acetone was used in the UOP laboratory to clean instruments.
- 14) The used acetone was placed under a vent hood and the acetone evaporated.
- 15) Pursuant to LAC 33:V.1103.B [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in LAC 33:VII.523 [40 C.F.R. § 261.2], must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.
- 16) The spent acetone is a solid waste.
- 17) UOP was required to make a determination of whether the spent acetone was a hazardous waste.
- 18) UOP failed to make an adequate hazardous waste determination prior to placing the used acetone under the vent hood where the acetone evaporated.
- 19) Pursuant to LAC 33:V.305 and LAC 33:303 [40 CFR 270.1 and 40 CFR 270.10], a permit is required if a facility treats, stores, or disposes of any hazardous waste that is listed at 40 CFR § 261.
- 20) At the time of the inspection an EPA inspector observed the evaporation of the spent acetone under a fume hood.
- 21) The spent acetone is a solid waste.
- 22) Spent acetone is listed in the table at 40 CFR § 261.31 as an F003 hazardous waste.
- 23) The spent acetone observed by the EPA inspector is a hazardous waste.
- 24) Evaporating spent acetone under a fume hood constitutes treatment of a hazardous waste.
- 25) UOP does not have a permit to treat spent acetone waste via evaporation.
- 26) Pursuant to LAC 33:V.1109.E [40 C.F.R. § 262.34 (c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste 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 LAC 33:V.1109 [40 C.F.R. § 262.34 (a)].
- 27) Pursuant to LAC 33:V.1509 [40 C.F.R. § 265.174], at least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

28) Pursuant to LAC 33:V.1513 [40 C.F.R. § 265.51(a)], each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

29) At the time of the inspection UOP was accumulating sodium aluminates D002, a characteristic hazardous waste, in a 20 yard baker box.

30) The inspector observed more than 55 gallons of waste in the baker box.

31) The baker box was not located in a less than 90 day storage area.

32) UOP did not conduct weekly inspections of the baker box.

33) UOP did not include the container location on the contingency plan.

34) On March 13, 2013, an inspector from the U.S. EPA re-inspected the UOP facility and found that all violations alleged in this CAFO had been corrected.

#### **IV. VIOLATIONS**

##### **Violation I - Failure to Make Hazardous Waste Determination - Acetone**

35) Paragraphs 1 through 34 are re-alleged and incorporated herein by reference.

36) Pursuant to LAC 33:V.1103.B [40 C.F.R. § 262.11(c)], a person who generates a solid waste, as defined in LAC 33: V.109 and 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

37) The spent acetone was a solid waste.

38) UOP failed to make a hazardous waste determination for the spent acetone.

39) This failure to make a hazardous waste determination was a violation of LAC 33:V.1103.B [40 C.F.R. §§ 262.11].

##### **Violation II - Treating Hazardous Waste Without a Permit - Spent Acetone**

40) Paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

41) Pursuant to LAC 33:V.305 and LAC 33:V.303 [40 CFR §§ 270.1 and 40 CFR 270.10] a permit is required if a facility treats stores, or disposes of any hazardous waste as listed in 40 CFR § 261.

42) At the time of the inspection an EPA inspector observed spent acetone evaporating under a fume hood, and evaporation of a waste constitutes treatment.

43) Spent acetone is identified in the table at LAC 33:V.4901 [40 CFR § 261.31] as an F003 waste.

44) Spent acetone is a hazardous waste.

45) Respondent has treated hazardous waste without a permit in violation of LAC 33:V.305 and LAC 33:V.303, Section 3005(a) of RCRA, 42 U.S.C. 6925(a), and 40 CFR §§ 270.1 and 40 CFR 270.10.

Violation III - Storage Without a Permit - Baker Box

46) Paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

47) Pursuant to LAC 33:V.305, Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and 40 C.F.R. § 270.1 the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. RCRA requires a permit for the treatment, storage, and disposal of any hazardous waste as identified or listed in 40 C.F.R. Part 261.

48) Pursuant to LAC 33:V.1109 [40 C.F.R. § 262.34 (b)], a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of LAC 33:V.1101 and LAC 33:V.4301 [40 CFR parts 264 and 265] and the permit requirements of LAC 33:V.305 [40 CFR part 270] unless an extension has been granted.

49) Pursuant to LAC 33:V.1109 [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste 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 LAC 33:V.1109 [40 C.F.R. § 262.34 (a)].

50) Pursuant to LAC 33:V.1509 [40 C.F.R. § 265.174], at least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

51) Pursuant to LAC 33:V.1513 [40 C.F.R. § 265.51(a)], each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

52) At the time of the inspection UOP was accumulating sodium aluminates D002, a hazardous waste characteristic in a 20 yard baker box. The baker box was not located in a less than 90 day storage area. The facility did not conduct weekly inspections or include the container location on the contingency plan.

53) UOP did not meet the requirements of LAC 33:V.1109 [40 C.F.R. § 262.34 (c)(1)], by not properly accumulating hazardous waste.

54) UOP did not meet the requirements of LAC 33:V.1509 [40 C.F.R. § 265.174] by conducting weekly inspections where containers are stored.

55) UOP failed to meet the requirements of LAC 33:V.4341 [40 C.F.R. § 265.51(a)], by having a contingency plan for the facility. Therefore UOP did not the requirements of LAC 33:V.1109 and 40 C.F.R. § 262.34.

56) Pursuant to LAC 33:V.1109 [40 C.F.R. § 262.34(a)(1)(i)], a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that the waste is placed in containers and the generator complies with the applicable subchapters of LAC 33:V.4535, 4561, and 4719 [subparts I, AA, BB, and CC of 40 CFR part 265].

57) At the time of the inspection an EPA inspector observed that UOP was not accumulating hazardous waste in a satellite area or in a less than 90 days storage area.

58) Therefore UOP did not meet the less than 90 day storage permitting exemption or specific requirements for accumulating hazardous waste, therefore UOP stored hazardous waste without a permit in violation of LAC 33:V.1109 [40 C.F.R. § 262.34(a)(1)(i)].

## **V. CIVIL PENALTY**

Section 3008 of RCRA authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each violation of RCRA and the regulations promulgated thereunder. The Complainant proposes to assess a civil penalty against Respondent of Twenty Thousand Dollars and Zero Cents (\$20,000.00). The computation of this amount is based upon the seriousness of the violations, good faith efforts by the Respondent to comply with the applicable regulations, the RCRA Civil Penalty Policy, and other factors identified by statute, regulation, and EPA policy. Economic benefit, if any, was identified using the BEN computer model.

Respondent has elected to undertake a Supplemental Environmental Project (SEP), pursuant to the EPA SEP Policy. The SEP will mitigate the proposed \$20,000 penalty. This SEP and its performance are integral to this settlement and any non-performance by Respondent will provide the basis for revocation of this settlement.

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A SEP is a penalty mitigation tool and as such the Respondent will receive ten thousand dollars (\$10,000.00) of mitigation from the above penalty based on a four to one ratio for establishing SEP credit. Respondent must spend at least \$40,745.00 on the projects identified in Part VI below. Failure by Respondent to spend at least \$40,745.00 on the identified projects will provide the basis for revocation of this document and any releases provided thereunder.

Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account - 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"

**PLEASE NOTE: The above referenced RCRA Docket number shall be clearly typed on the check, or other method of payment, to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is

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made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief  
Compliance Enforcement Section (6EN-HH)  
Hazardous Waste Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-ID)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty to be paid to the United States Treasurer pursuant to this CAFO.

If Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

Pursuant to 31 U.S.C. § 3717 and 40 CFR § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 CFR § 13.11(b).

EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 CFR § 13.11(c). Should a penalty charge on

the debt be required, it shall accrue from the first day payment is delinquent. 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

#### **VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Respondent agrees to undertake an environmentally beneficial projects pursuant to the Supplemental Environmental Projects (SEP) Policy created by EPA and memorialized in the April 10, 1998, document "Issuance of Final Supplemental Environmental Projects Policy."

Respondent agrees to fund the following four SEP projects:

1) Purchase of a hazardous materials response truck for the City of Baton Rouge Fire Department. Specifically, Respondent agrees to purchase a Chevrolet Tahoe 2WD 4DR 1500 Commercial (Code: CC10706) for the Hazardous Materials Unit. Respondent shall spend not less than \$26,425 for the vehicle.

2) Purchase and installation of Emergency lights/Accessory Package for the vehicle identified in Project #1 above. Respondent shall spend not less than \$3,820 for the purchase and installation of the emergency light package. This amount is in addition to the cost of the base vehicle identified in project #1 above.

3) Purchase and installation of a Motorola XTL 2500 Radio that will be installed in the vehicle identified in project #1 above. Respondent shall spend no less than \$2,500 to purchase and install the radio.

4) Purchase of a Midland Emergency Response Kit. Respondent shall spend no less than \$8,000 on the Midland Emergency Response Kit that will be provided to the City of Baton Rouge Fire Department.

The purchase and installation of the items listed above shall be coordinated through the City of Baton Rouge Fire Department.

Respondent shall spend no less than \$40,745 in implementing these four projects. Any costs or expenses that Respondent incurs in performance of this settlement that exceed the stated amounts will not be credited for purposes of penalty mitigation under this Section.

These projects meet the conditions of the SEP policy as articulated by the 1998 guidance and further refined by the 2011 Office of General Counsel opinion on impermissible augmentation.

The two parties to the agreement, as well as the City of Baton Rouge Fire Department, are each unaware, after appropriate inquiry, of any federal funding mechanisms that would supply the equipment identified in this section (SEP Projects #1 through #4) to the City of Baton Rouge Fire Department.

**VII. TERMS OF SETTLEMENT**

For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, neither admits nor denies the specific factual allegations or conclusions of law in the CAFO, consents to the assessment of the civil penalty, including the performance of supplemental environmental projects, consents to the conditions specified in the Consent Agreement, and waives any right to contest the allegations or appeal the proposed final order.

**VIII. RETENTION OF ENFORCEMENT RIGHTS**

The U.S. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of federal or state laws, regulations, permit conditions, or other requirements. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of the Resource Conservation and Recovery Act (RCRA). Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**IX. COSTS**

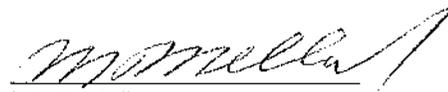
Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs or attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

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THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER:

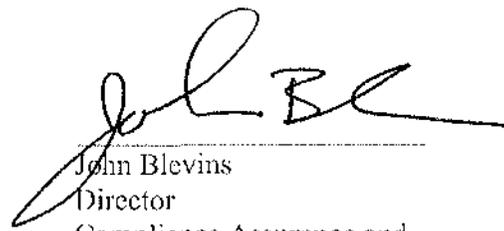
FOR THE RESPONDENT:

Date: 4/15/13

  
UOP LLC

FOR THE COMPLAINANT:

Date: 4-18-13

  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated April 18, 2013

  
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Ben Harrison  
Regional Judicial Officer

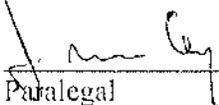
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**CERTIFICATE OF SERVICE**

I hereby certify that on the original of the foregoing Complaint, Consent Agreement, and Final Order concerning UOP LLC, Docket No. RCRA-06-2013-0906 was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such Complaint, Consent Agreement, and Final Order, together with a copy of the Consolidated Rules of Practice (40 C.F.R. Part 22) was placed in the United States Mail, postage prepaid, certified mail, return receipt requested, on this 19<sup>th</sup> day of April 2013, addressed to the following:

Mr. Dwayne Johnson  
Kean Miller LLP  
P.O. Box 3513  
Baton Rouge, Louisiana 70821

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

  
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Paralegal