

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Certified Mail No. 7008 1140 0003 8259 8442  
Return Receipt Requested

Mr. Bob Henry  
Senior District Manager  
Chemical Waste Management, Inc.  
35251 Old Skyline Road  
P.O. Box 471  
Kettleman City, CA 93239

NOV 29 2010

Re: Consent Agreement and Final Order  
In the Matter of Chemical Waste Management, Inc.

Dear Mr. Henry:

Please find enclosed the final executed Consent Agreement and Final Order (CA/FO) that you entered into on behalf of Chemical Waste Management, Inc., with the United States Environmental Protection Agency, Region IX (EPA).

This CA/FO sets out the terms for resolution of the Toxic Substances Control Act (TSCA) administrative civil penalty action in the matter of Chemical Waste Management, Inc.

Your full compliance with the payment terms of this CA/FO and completion of all tasks required by this CA/FO will close this case. If you have any questions regarding the rules, regulations and statutes governing your operations which are implemented by EPA or which govern the proceedings terminated by the enclosed document, please contact Mr. Christopher Rollins of my staff at 415-947-4166, or Assistant Regional Counsel, Ms. Letitia Moore at (415) 972-3928.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director  
Waste Management Division

Enclosure

cc: Don Plain, DTSC

US EPA ARCHIVE DOCUMENT

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1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION IX  
4 75 HAWTHORNE STREET  
5 SAN FRANCISCO, CA 94105

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

6 In the Matter of: ) Docket No. TSCA-09-2011-0001  
7 CHEMICAL WASTE MANAGEMENT, INC., )  
8 Respondent. ) CONSENT AGREEMENT  
9 ) AND FINAL ORDER  
10 ) PURSUANT TO 40 C.F.R.  
11 ) §§ 22.13 and 22.18

12 CONSENT AGREEMENT

13 The United States Environmental Protection Agency, Region IX  
14 ("EPA"), and Chemical Waste Management, Inc. ("Respondent"),  
15 agree to settle this matter and consent to the entry of this  
16 Consent Agreement and Final Order ("CA/FO"), which simultaneously  
17 commences and concludes this matter in accordance with Sections  
18 22.13(b) and 22.18(b) of the Consolidated Rules of Practice  
19 Governing the Administrative Assessment of Civil Penalties and  
20 the Revocation/Termination or Suspension of Permits 40 C.F.R.  
21 §§ 22.13(b) and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action  
24 instituted against Respondent pursuant to Section 16(a) of the  
25 Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for  
26 violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to  
27 comply with implementing regulations governing polychlorinated  
28 biphenyls ("PCBs") at 40 C.F.R. Part 761.

29 2. Complainant is the Director of the Waste Management

1 Division, EPA Region IX, who has been duly delegated the  
2 authority to bring this action and to sign a consent agreement  
3 settling this action.

4 3. Respondent owns and operates a commercial hazardous  
5 waste facility in Kettleman City, Kings County, California (the  
6 "Facility"). The Facility manages, treats and disposes of PCBs,  
7 hazardous waste and non-hazardous industrial waste.

8 4. Respondent is a "person," as that term is defined at 40  
9 C.F.R. § 761.3.

10 5. At all times relevant to this CA/FO, Respondent, at the  
11 Facility, managed and disposed of PCBs regulated under TSCA and  
12 its implementing regulations at 40 C.F.R. Part 761.

13 6. At all times relevant to this CA/FO, Respondent managed  
14 PCBs at concentrations  $\geq$  50 ppm in and around the PCB Storage and  
15 Flushing Building at the Facility.

16 **B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

17 7. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e),  
18 EPA promulgated regulations governing PCBs at 40 C.F.R. Part 761.

19 8. "PCB" and "PCBs" means any chemical substance that is  
20 limited to the biphenyl molecule that has been chlorinated to  
21 varying degrees or any combination of substances which contains  
22 such substances. 40 C.F.R. § 761.3.

23 9. "PCB Article" means any manufactured article, other  
24 than a PCB container, that contains PCBs and whose surface(s) has  
25 been in direct contact with PCBs. "PCB Article" includes  
26 capacitors, transformers, electric motors, pumps, pipes and any  
27 other manufactured item (a) which is formed to a specific shape

1 or design during manufacture, (b) which has end use function(s)  
2 dependent in whole or in part upon its shape or design during end  
3 use, and (c) which has either no change of chemical composition  
4 during its end use or only those changes of composition which  
5 have no commercial purpose separate from that of the PCB Article.  
6 40 C.F.R. § 761.3.

7 10. "PCB container" means any package, can, bottle, bag,  
8 barrel, drum, tank, or other device that contains PCBs or PCB  
9 Articles and whose surface(s) has been in direct contact with  
10 PCBs. 40 C.F.R. § 761.3.

11 11. "PCB Item" means any PCB Article, PCB Article  
12 Container, PCB Container, PCB Equipment, or anything that  
13 deliberately or unintentionally contains or has as a part of it  
14 any PCB or PCBs. 40 C.F.R. § 761.3.

15 12. "PCB-contaminated electrical equipment" means any  
16 electrical equipment including, but not limited to,  
17 transformers..., that contains PCBs at concentrations  $\geq$  50 ppm  
18 and  $<$  500 ppm in the contaminating fluid. 40 C.F.R. § 761.3.

19 13. "Person" means any individual, corporation,  
20 partnership, or association; any State, or political subdivision  
21 thereof; any interstate body; and any department, agency, or  
22 instrumentality of the Federal Government. 40 C.F.R. § 761.3.

23 14. Section 15 of TSCA makes it unlawful for any person to  
24 fail or refuse to comply with any rule promulgated or order  
25 issued under Section 2604 or 2605 of TSCA. TSCA  
26 Section 15(1)(C), 15 U.S.C. § 2614(1)(C).

27 15. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes  
28 In the Matter of Chemical Waste Management, Inc.

1 the EPA Administrator to assess a civil penalty not to exceed  
2 \$25,000 per day for each violation of Section 15 of TSCA, 15  
3 U.S.C. § 2614. This statutory maximum civil penalty was  
4 subsequently raised to \$37,500 per day for each violation that  
5 occurred after January 12, 2009 pursuant to the Federal Civil  
6 Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as  
7 amended, and its implementing regulation, the Civil Monetary  
8 Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19.

9 C. ALLEGED VIOLATIONS

10 COUNT 1

11 Failure to Indicate Removal of Service Date

12 16. Paragraphs 1 through 15 above are incorporated herein  
13 by this reference as if they were set forth here in their  
14 entirety.

15 17. 40 C.F.R. § 761.65(c)(8) requires that containers of  
16 PCBs at concentrations of 50 ppm or greater stored for disposal  
17 be marked with the date removed from service for disposal.

18 18. On February 8, 2010, an EPA Inspector observed that  
19 Respondent had a container of PCB waste at concentrations of 50  
20 ppm or greater stored for disposal at the Facility.

21 19. The container was not marked with the removal from  
22 service date.

23 20. Respondent's failure to mark the container with the  
24 removal from service date constitutes a violation of 40 C.F.R.  
25 § 761.65(c)(8) and Section 15(1)(C) of TSCA, 15 U.S.C.  
26 § 2614(1)(C).

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COUNT 2  
**Failure to Properly Manifest**

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.

22. 40 C.F.R. § 761.207(a) requires that generators provide (i) the date of removal from service for disposal and (ii) the weight in kilograms of the PCB waste on the manifests for PCB wastes being transported for commercial off-site storage or disposal.

23. EPA inspectors observed nine manifests from the Facility for PCB waste generated by Respondent that did not include the removal from service date or the PCB waste weight in kilograms for PCB wastes being transported for commercial off-site storage or disposal.

24. Each manifest on which Respondent failed to include either the removal from service date or the PCB waste weight in kilograms is a violation of 40 C.F.R. § 761.207(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT 3  
**Continued Use Violation**

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.

26. No person may use any PCB or PCB item, regardless of concentration, in any manner other than in a totally enclosed manner with the United States, unless authorized under 40 C.F.R. § 761.30 or excepted under 40 C.F.R. § 761.20(a). 40 C.F.R.

1 § 761.20(a); see, also, Section 6(e)(2)(A) of TSCA, 15 U.S.C.  
2 § 2605(e)(2)(A).

3 27. A "totally enclosed manner" means any manner that will  
4 ensure no exposure of human beings or the environment to any  
5 concentration of PCBs. 40 C.F.R. § 761.3.

6 28. Any person may use equipment, structures or other  
7 materials that were contaminated with PCBs during use or because  
8 of spills from, or proximity to, PCBs at concentrations  $\geq 50$  ppm,  
9 provided the materials were decontaminated in accordance with  
10 TSCA or now meet an applicable decontamination standard. 40  
11 C.F.R. § 761.30(u).

12 29. On February 8, 2010, an EPA Inspector collected two  
13 wipe samples from the floor of the PCB Storage and Flushing  
14 Building at the Facility, directly below the two drain valve caps  
15 for Respondent's PCB tank.

16 30. Sample results for the wipe samples collected below  
17 Respondent's PCB tank showed PCB concentrations in excess of  
18 10 micrograms per 100 square centimeters ( $10 \mu\text{g}/100 \text{ cm}^2$ ),  
19 specifically, 30 and 35  $\mu\text{g}/100 \text{ cm}^2$ .

20 31. Respondent used the PCB Storage and Flushing Building  
21 at the Facility without meeting the conditions for use under 40  
22 C.F.R. § 761.30(u), in violation of 40 C.F.R. § 761.30(u) and  
23 Sections 6(e)(2)(A) and 15(1)(C) of TSCA, 15 U.S.C.  
24 §§ 2605(e)(2)(A) and 2614(1)(C).

25 **COUNT 4**  
26 **Continued Use Violation**

27 32. Paragraphs 1 through 31 above are incorporated herein



1 by this reference as if they were set forth here in their  
2 entirety.

3 33. On June 2, 2010, an EPA Inspector collected a wipe  
4 sample from the floor of the PCB Storage and Flushing Building at  
5 the Facility, near the first drain valve cap for Respondent's PCB  
6 tank.

7 34. The sample result for the wipe sample collected near  
8 Respondent's PCB tank showed PCB concentrations in excess of  
9 10  $\mu\text{g}/100\text{ cm}^2$ , specifically, 11  $\mu\text{g}/100\text{ cm}^2$ .

10 35. On June 2, 2010, an EPA Inspector collected a wipe  
11 sample from the concrete slab adjacent to Respondent's PCB  
12 Storage and Flushing Building at the Facility.

13 36. The sample result for the wipe sample collected from  
14 the concrete slab showed PCB concentrations in excess of  
15 10  $\mu\text{g}/100\text{ cm}^2$ , specifically, 24  $\mu\text{g}/100\text{ cm}^2$ .

16 37. Respondent used the PCB Storage and Flushing Building  
17 and the adjacent concrete slab at the Facility without meeting  
18 the conditions for use under 40 C.F.R. § 761.30(u), in violation  
19 of 40 C.F.R. § 761.30(u) and Sections 6(e)(2)(A) and 15(1)(C) of  
20 TSCA, 15 U.S.C. §§ 2605(e)(2)(A) and 2614(1)(C).

21 COUNT 5  
22 **Improper Disposal Violation**

23 38. Paragraphs 1 through 37 above are incorporated herein  
24 by this reference as if they were set forth here in their  
25 entirety.

26 39. Any person storing or disposing of PCB waste must do so  
27 in accordance with subpart D of 40 C.F.R. Part 761. 40 C.F.R.

1 § 761.50(a).

2 40. Spills and other uncontrolled discharges of PCBs at  
3 concentrations of  $\geq 50$  ppm constitute the disposal of PCBs. 40  
4 C.F.R. § 761.50(a)(4).

5 41. At all times relevant to this CA/FO, Respondent managed  
6 PCBs at concentrations  $\geq 50$  ppm in and around the PCB Storage and  
7 Flushing Building at the Facility.

8 42. Sample results of soil samples taken by EPA and  
9 Respondent of areas around the PCB Storage and Flushing Building  
10 at the Facility show PCBs concentrations  $\geq 1$  ppm, ranging from 1.1  
11 to 57 ppm.

12 43. The disposal in the soil around the PCB Storage and  
13 Flushing Building at the Facility of PCBs managed at the PCB  
14 Storage and Flushing Building was not in accordance with Subpart  
15 D of 40 C.F.R. Part 761.

16 44. Respondent's failure to dispose of PCBs in accordance  
17 with Subpart D of 40 C.F.R. Part 761 constitutes a violation of  
18 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C.  
19 § 2614(1)(C).

20 **COUNT 6**  
21 **Improper Disposal Violation**

22 45. Paragraphs 1 through 44 above are incorporated herein  
23 by this reference as if they were set forth here in their  
24 entirety.

25 46. Sample results of soil samples taken by Respondent  
26 under the concrete slab adjacent to the PCB Storage and Flushing  
27 Building at the Facility show PCBs concentrations  $\geq 1$  ppm,

1 specifically 64, 74 and 440 ppm.

2 47. The disposal in the soil under the concrete slab  
3 adjacent to the PCB Storage and Flushing Building at the Facility  
4 of PCBs managed at the PCB Storage and Flushing Building was not  
5 in accordance with Subpart D of 40 C.F.R. Part 761.

6 48. Respondent's failure to dispose of PCBs in accordance  
7 with Subpart D of 40 C.F.R. Part 761 constitutes a violation of  
8 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C.  
9 § 2614(1)(C).

10 D. CIVIL PENALTY

11 49. Section 16(a) of TSCA, 15 U.S.C. §2615(a), as adjusted  
12 by the Federal Civil Penalties Inflation Adjustment Act of 1990,  
13 28 U.S.C. §2461, and the Debt Collection Improvement Act of 1996,  
14 31 U.S.C. §3701 (see 61 Fed. Reg. 69360 (Dec. 31, 1996)),  
15 authorizes a civil penalty of up to \$37,500 per day for each  
16 violation occurring after January 12, 2009 (73 Fed. Reg. 75,340  
17 (Dec. 11, 2008)); 40 C.F.R. §19.4.

18 50. Based upon the facts alleged herein and upon those  
19 factors that EPA must consider pursuant to Section 16(a) of TSCA,  
20 15 U.S.C. § 2615(a), including the nature, circumstances, extent,  
21 and gravity of the violations and, with respect to the violator,  
22 ability to pay, effect on ability to continue to do business, any  
23 history of prior such violations, the degree of culpability, as  
24 well as such other matters as justice may require, EPA proposes  
25 that Respondent be assessed THREE HUNDRED AND TWO THOUSAND AND  
26 ONE HUNDRED DOLLARS(\$302,100) as the civil penalty for the  
27 violations alleged herein. The proposed penalty is consistent

28 In the Matter of Chemical Waste Management, Inc.

Page 9

1 with the April 1990 PCB Penalty Policy.

2 **E. ADMISSIONS AND WAIVER OF RIGHTS**

3 51. For the purposes of this proceeding, Respondent admits  
4 to the jurisdictional allegations set forth in Sections A and B  
5 of this CA/FO. Respondent consents to and agrees not to contest  
6 EPA's jurisdiction and authority to enter into and issue this  
7 CA/FO and to enforce its terms. Further, Respondent will not  
8 contest EPA's jurisdiction and authority to compel compliance  
9 with this CA/FO in any enforcement proceedings, either  
10 administrative or judicial, or to impose sanctions for violations  
11 of this CA/FO.

12 52. Respondent neither admits nor denies any allegations of  
13 fact set forth in Section C of this CA/FO. Respondent hereby  
14 waives any rights Respondent may have to contest the allegations  
15 set forth in this CA/FO, including without limitation a hearing  
16 pursuant to Section 16(a)(2)(A) of TSCA, 16 U.S.C.  
17 § 2615(a)(2)(A), and hereby consents to the issuance of this  
18 CA/FO without adjudication. In addition, Respondent hereby  
19 waives any rights Respondent may have to appeal the Final Order  
20 attached to this Consent Agreement and made part of this CA/FO.

21 **F. PARTIES BOUND**

22 53. This CA/FO shall apply to and be binding upon  
23 Respondent and its agents, successors and assigns and upon all  
24 persons acting under or for Respondent, until such time as all  
25 tasks required by this CA/FO have been completed, the civil  
26 penalty required under Section D has been paid in accordance with  
27 Section G, and any delays in performance and/or stipulated

1 penalties have been resolved. At such time as those matters are  
2 concluded, this CA/FO shall terminate and constitute full  
3 settlement of the violations alleged herein.

4 54. No change in ownership or corporate, partnership or  
5 legal status relating to the Facility will in any way alter  
6 Respondent's obligations and responsibilities under this CA/FO.

7 55. The undersigned representative of Respondent hereby  
8 certifies that he or she is fully authorized by Respondent to  
9 enter into the terms and conditions of this CA/FO, to execute  
10 this CA/FO, and to legally bind Respondent to this CA/FO.

11 **G. PAYMENT OF CIVIL PENALTY**

12 56. Respondent consents to the assessment of and agrees to  
13 pay a civil penalty in the amount of THREE HUNDRED AND TWO  
14 THOUSAND AND ONE HUNDRED DOLLARS (\$302,100) in settlement of the  
15 civil penalty claims of the United States for the violations of  
16 TSCA, and its implementing regulations, as alleged in Section C  
17 above.

18 57. Respondent shall submit payment of the civil penalty of  
19 THREE HUNDRED AND TWO THOUSAND AND ONE HUNDRED DOLLARS (\$302,100)  
20 within thirty (30) calendar days of the Effective Date of this  
21 CA/FO. The Effective Date of this CA/FO is the date that the  
22 Final Order contained in this CA/FO, having been approved and  
23 issued by the Regional Judicial Officer, is filed. Payment shall  
24 be made by wire transfer to the account of the U.S. Treasury at  
25 the Federal Reserve Bank of New York.

26 Federal Reserve Bank of New York  
27 ABA: 021030004

28 In the Matter of Chemical Waste Management, Inc.

1 Account Number: 68010727  
2 SWIFT address: FRNYUS33  
3 33 Liberty Street  
4 New York, NY 10045  
5 Field Tag 4200 of the Fedwire message should read:  
6 "D 68010727 Environmental Protection Agency"

7 See also,  
8 [http://www.epa.gov/ocfo/finservices/payment\\_instructions.htm](http://www.epa.gov/ocfo/finservices/payment_instructions.htm)

9 58. At the time payment is so made, a copy of the  
10 transmittal form shall be sent to:

11 Regional Hearing Clerk (RC-1)  
12 Office of Regional Counsel  
13 U.S. Environmental Protection Agency - Region IX  
14 75 Hawthorne Street  
15 San Francisco, CA 94105

16 and

17 Christopher Rollins (WST-3)  
18 Waste Management Division  
19 U.S. Environmental Protection Agency - Region IX  
20 75 Hawthorne Street  
21 San Francisco, CA 94105

22 59. In accordance with the Debt Collection Act of 1982 and  
23 U.S. Treasury directive (TFRM 6-8000), the payment must be  
24 received within thirty (30) calendar days of the Effective Date  
25 of this CA/FO to avoid additional charges. If payment is not  
26 received within thirty (30) calendar days, interest will accrue  
27 from the Effective Date of this CA/FO at the current rate  
28 published by the United States Treasury as described at 40 C.F.R.  
§ 13.11(a). A late penalty charge will be imposed after thirty  
(30) calendar days with an additional charge for each subsequent  
30-day period, in accordance with 40 C.F.R. § 13.11(b). A 6% per  
annum penalty will further apply on any principal amount not paid  
within ninety (90) calendar days of the due date, as described at  
40 C.F.R. § 13.11(c). Respondent further will be liable for

1 stipulated penalties as set forth below for any payment not  
2 received by its due date.

3 60. The penalties specified in this CA/FO shall represent  
4 civil penalties assessed by EPA and shall not be deducted by  
5 Respondent or any other person or entity for federal, state or  
6 local taxation purposes.

7 **H. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

8 61. In addition to the interest and per annum penalties  
9 described above, in the event that Respondent fails to pay the  
10 full amount of the penalty within the time specified in  
11 Section G, Respondent agrees to pay Complainant a stipulated  
12 penalty in the amount of up to TEN THOUSAND DOLLARS (\$10,000.00)  
13 for each day the default continues.

14 62. All penalties shall begin to accrue on the date that  
15 performance is due or a violation occurs, and shall continue to  
16 accrue through the final day of correction of the noncompliance.  
17 Nothing herein shall prevent the simultaneous accrual of separate  
18 penalties for separate violations.

19 63. All penalties owed to EPA under this Section shall be  
20 due within thirty (30) days of receipt of a notification of  
21 noncompliance. Such notification shall describe the  
22 noncompliance and shall indicate the amount of penalties due.  
23 Interest at the current rate published by the United States  
24 Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue  
25 on the unpaid balance at the end of the thirty-day period.

26 64. Payment of stipulated penalties shall be made in  
27 accordance with the procedure set forth for payment of the

28 In the Matter of Chemical Waste Management, Inc.

1 penalty in Section G of this CA/FO.

2       65. All payments shall indicate the name of the Facility,  
3 Respondent's name and address, and the EPA docket number assigned  
4 to this action.

5       66. The payment of stipulated penalties shall not alter in  
6 any way Respondent's obligation to complete the performance  
7 required hereunder.

8       67. The stipulated penalties set forth in this Section do  
9 not preclude EPA from pursuing any other remedies or sanctions  
10 which may be available to EPA by reason of Respondent's failure  
11 to comply with any of the requirements of this CA/FO.

12       68. Notwithstanding any other provision of this Section,  
13 EPA may, in its unreviewable discretion, waive any portion of  
14 stipulated penalties that have accrued pursuant to this CA/FO.

15       69. The payment of stipulated penalties specified in this  
16 Section shall not be deducted by Respondent or any other person  
17 or entity for federal, state or local taxation purposes.

18 **I. CERTIFICATION OF COMPLIANCE**

19       70. Respondent is conducting characterization and  
20 remediation of soil contamination that formed the basis for  
21 violations alleged in this CA/FO pursuant to EPA's September 23,  
22 2010 Conditional Approval of the "PCB Building Self-Implementing  
23 Cleanup Plan" and the State of California Department of Toxic  
24 Substances Control's Corrective Action Consent Order, Docket No.  
25 HWCA P1-10/11-001 (Oct. 14, 2010).

26       71. Within twenty (20) days of the Effective Date of this  
27 CA/FO, Respondent shall certify to EPA under penalty of law that

28 In the Matter of Chemical Waste Management, Inc.



1 Respondent has fully complied with the TSCA PCB requirements that  
2 formed the basis for the violations alleged in this CA/FO.

3 72. The certification required to be made pursuant to this  
4 CA/FO shall be sent by certified mail, with return receipt  
5 requested, to:

6 Christopher Rollins (WST-3)  
7 Waste Management Division  
8 U.S. Environmental Protection Agency - Region IX  
9 75 Hawthorne Street  
10 San Francisco, CA 94105

11 73. The certification shall contain a Certification  
12 Statement signed by a responsible official on behalf of  
13 Respondent. The Certification Statement should be as follows:

14 I certify under penalty of law that the information  
15 contained in or accompanying this document is true,  
16 accurate, and complete. This certification is based  
17 upon my personal knowledge or upon my inquiry of the  
18 person or persons directly responsible for gathering  
19 the information.

20 A responsible official for the purposes of this provision means:

21 a president, secretary, treasurer or vice-president in  
22 charge of a principal business function for Respondent,  
23 or any other person who performs similar policy or  
24 decision-making functions for Respondent.

25 **J. RESERVATION OF RIGHTS**

26 74. In accordance with 40 C.F.R. § 22.18(c), this CA/FO  
27 resolves only Respondent's liability for federal civil penalties  
28 for the violations and facts specifically alleged in Section C of  
this CA/FO. Nothing in this CA/FO is intended to or shall be  
construed to resolve (i) any civil liability for violations of  
any provision of any federal, state, or local law, statute,  
regulation, rule, ordinance, or permit not specifically alleged  
in Section C of this CA/FO; or (ii) any criminal liability.

1           75. EPA expressly reserves all rights and defenses that it  
2 may have.

3           76. EPA hereby reserves all of its statutory and regulatory  
4 powers, authorities, rights and remedies, both legal and  
5 equitable, including the right to require that Respondent perform  
6 tasks in addition to those required by this CA/FO. EPA further  
7 reserves all of its statutory and regulatory powers, authorities,  
8 rights and remedies, both legal and equitable, which may pertain  
9 to Respondent's failure to comply with any of the requirements of  
10 this CA/FO, including without limitation, the assessment of  
11 penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). This  
12 CA/FO shall not be construed as a covenant not to sue, release,  
13 waiver or limitation of any rights, remedies, powers or  
14 authorities, civil or criminal, which EPA has under the  
15 Comprehensive Environmental Response, Compensation and Liability  
16 Act of 1980, as amended ("CERCLA"), or any other statutory,  
17 regulatory or common law enforcement authority of the United  
18 States.

19           77. Compliance by Respondent with the terms of this CA/FO  
20 shall not relieve Respondent of its obligations to comply with  
21 any applicable local, state, or federal laws and regulations.

22           78. The entry of this CA/FO and Respondent's consent to  
23 comply shall not limit or otherwise preclude EPA from taking  
24 additional enforcement actions should EPA determine that such  
25 actions are warranted except as they relate to Respondent's  
26 liability for federal civil penalties for the specific alleged  
27 violation and facts as set forth in Section C of this CA/FO.

28           79. This CA/FO is not intended to be nor shall it be

1 construed as a permit. This CA/FO does not relieve Respondent of  
2 any obligation to obtain and comply with any local, state, or  
3 federal permits.

4 **K. ATTORNEYS' FEES AND COSTS**

5 80. Each party shall bear its own attorneys' fees, costs,  
6 and disbursements incurred in this proceeding.

7 **L. EFFECTIVE DATE**

8 81. In accordance with 40 C.F.R. §§ 22.18(b)(3) and  
9 22.31(b), this CA/FO shall be effective on the date that the  
10 Final Order contained in this CA/FO, having been approved and  
11 issued by the Regional Judicial Officer, is filed.

12 **M. MISCELLANEOUS**

13 82. The headings in this CA/FO are for convenience of  
14 reference only and shall not affect interpretation of this CA/FO.


15  
16 **FOR RESPONDENT, CHEMICAL WASTE MANAGEMENT, INC.**

17  
18 11/15/10  
19 DATE

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19 \_\_\_\_\_  
20 Robert G. Henry  
21 Vice President  
22 Chemical Waste Management, Inc.

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24 **FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:**

25 11/19/10  
26 DATE

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25 \_\_\_\_\_  
26 Jeff Scott  
27 Director  
28 Waste Management Division  
29 U.S. Environmental Protection Agency,  
30 Region IX

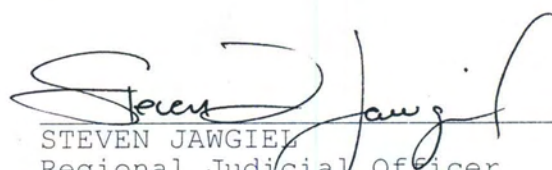
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FINAL ORDER

IT IS HEREBY ORDERED that this CA/FO (Docket No. TSCA-09-2011-0001 ) be entered and that Respondent pay a civil penalty in the amount of THREE HUNDRED AND TWO THOUSAND AND ONE HUNDRED DOLLARS (\$302,100) by wire transfer to the account of the U.S. Treasury at the Federal Reserve Bank of New York, within thirty (30) days after the Effective Date of this Consent Agreement and Final Order. A copy of the wire transfer form shall be sent to the EPA Region IX addresses specified in Section G of this Consent Agreement and Final Order within such 30-day period.

This Consent Agreement and Final Order shall become effective upon filing by the Regional Hearing Clerk.

11/29/10  
DATE

  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region IX

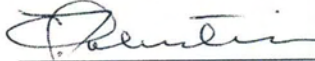
## CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Mr. Bob Henry  
Senior District Manager  
Chemical Waste Management, Inc.  
35251 Old Skyline Road  
P.O. Box 471  
Kettleman City, CA 93239

11/29/10

Date



~~for~~ : Steven Armsey  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX