

**FILED**

**Sep 09, 2024**

**2:04 pm**

**U.S. EPA REGION 4  
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Ensign-Bickford Aerospace & Defense  
Company,  
500 Bickford Road  
Graham, Kentucky 42344  
EPA ID No.: KYR000032102**

Respondent.

Docket No. **RCRA-04-2024-4006(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 or the Act), 42 U.S.C. § 6928(a), 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 the Respondent's admission of violation or adjudication of any issues of law or fact herein.

#### **II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA) 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. The Respondent is Ensign-Bickford Aerospace & Defense Company, a corporation doing business in the Commonwealth of Kentucky. This proceeding pertains to the Respondent's facility located at 500 Bickford Road, Graham, Kentucky 42344 (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) Title XVIII, Chapter 224, Subchapter 46-Hazardous Waste, and Title 401 of the Kentucky Administrative Regulations (KAR), Chapter 39.
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 39:080, Section 1 [40 C.F.R. Part 262].
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 39:090, Section 1 [40 C.F.R. Part 264] (permitted) and 401 KAR 39:090, Section 2(1) [40 C.F.R. Part 265] (interim status).
13. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.4(b)].

15. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to 401 KAR 39:060, Section 3(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in 401 KAR 39:060, Section 3(1) [40 C.F.R. Part 261, Subpart D].
17. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.31].
18. Pursuant to 401 KAR 39:005, Section 1(33) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR 39:060, Section 3(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
19. Pursuant to 401 KAR 39:005, Section 1(28) [40 C.F.R. § 260.10], a “facility” includes all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
20. Pursuant to 401 KAR 39:005, Section 1(53) [40 C.F.R. § 260.10], a “person” includes a corporation.
21. Pursuant to 401 KAR 39:005, Section 1(51) and (50) [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility, and an “operator” is the person responsible for the overall operation of a facility.
22. Pursuant to 401 KAR 39:005, Section 1(68) [40 C.F.R. § 260.10], “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.
23. Pursuant to 401 KAR 39:005, Section 1(14) [40 C.F.R. § 260.10] a “container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
24. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a “tank” means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
25. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a “tank system” is defined as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
26. Pursuant to 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10], a large quantity generator of hazardous waste (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste in a calendar month.

27. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17], a LQG 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) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17] (hereinafter referred to as the "LQG Permit Exemption").
28. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(iv)], which is a condition of the LQG Permit Exemption, (A) a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste; and (B) a container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.
29. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(v)], which is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect central accumulation areas (CAAs) looking for leaking containers and for deterioration of containers caused by corrosion or other factors.
30. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], which incorporates 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.195(a), (b), and (e)], and is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks must conduct daily inspections of monitoring and leak detection equipment data, overspill control equipment, above ground portions of the tank system, the secondary containment system, and the tank ancillary equipment that is not provided with secondary containment.
31. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], which incorporates 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1063(d)], and is a condition of the LQG Permit Exemption, a generator must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10 percent by weight, using the Air Emission Standards for Equipment Leaks listed in 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1063(d)(1)-(3)].
32. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], which incorporates 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1084(a)], and is a condition of the LQG Permit Exemption, a generator shall determine the average volatile organic (VO) concentration of hazardous waste at the point of waste origination using the Air Emission Standards for Tanks listed in 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1084(a)(1)-(4)].
33. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(5)(i)(C)], which is a condition of the LQG Permit Exemption, a generator must mark or label its containers with the following: the words "Hazardous Waste"; an indication of the hazards of the contents; and the date upon which each period of accumulation begins clearly visible for inspection on each container.
34. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(6)], which incorporates 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.255], and is a condition of the LQG Permit Exemption, a generator is required to 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.

35. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(7)(iv)], which is a condition of the LQG Permit Exemption, the generator must maintain the following documents and records at the facility: (A) the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (B) a written job description for each position; (C) a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position; and (D) records documenting that the training required has been given to and completed by Facility personnel.
36. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(9)], which is a condition of the LQG Permit Exemption, a generator is required to comply with all applicable requirements of the land disposal restrictions (LDR) for hazardous waste in 401 KAR 39:060, Section 4 [40 C.F.R. Part 268].
37. Pursuant to 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], which incorporates 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.192(a), (b), and (d)], and is a condition of the LQG Permit Exemption, a generator accumulating hazardous waste in tanks, must obtain a written tank assessment reviewed and certified by a qualified Professional Engineer, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; must have an independent, qualified installation inspector, or qualified Professional Engineer, trained and experienced in the proper installation of tank systems, inspect the system or component for defects prior to covering, enclosing, or placing a new tank system or component in use; and must have all new tanks and ancillary equipment tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed in use.

#### **IV. FINDINGS OF FACTS**

38. The Respondent owns and operates a manufacturing plant for explosives located at 500 Bickford Road, Graham, Kentucky 42344.
39. The Respondent manufactures various explosive devices for the military and aerospace industry.
40. In a letter dated June 23, 2010, the Kentucky Department for Environmental Protection (KYDEP) approved the Respondent's application for onsite generator treatment of Lead Azide (D002, D008) and Lead Styphnate (D002, D008) in containers.
41. On May 04, 2023, the EPA and KYDEP conducted a RCRA compliance evaluation inspection (CEI) at the Respondent's Facility. The EPA's findings of the CEI were documented in a report electronically mailed to the Respondent on September 26, 2023.

42. The Respondent notified KYDEP of its status as a LQG of hazardous waste on December 13, 2022.
43. At the time of the CEI, the inspectors observed multiple containers of Lead Azide (D002, D008)) hazardous waste with locking rings in the open position and not securely closed in the Multi-Reaction Facility (MRF) CAA.
44. At the time of the CEI, the Respondent failed to provide a weekly inspection record of the Facility's CAAs for the last week of December 2022. It was later determined that weekly inspections were not conducted during the last week of December 2022.
45. At the time of the CEI, the inspectors reviewed daily tank inspection records and observed that the Respondent failed to conduct over 90 daily tank inspections for hazardous waste tank TK503 and over 100 daily tank inspections for hazardous waste tank TK3000 in 2022.
46. At the time of the CEI, the inspectors found that the Respondent had failed to determine the organic concentration of the hazardous waste contained in or in contact with each piece of equipment in the hazardous waste tank system, to determine whether the equipment contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight in accordance with the Air Emission Standards for Equipment Leaks.
47. At the time of the CEI, the inspectors found that the Respondent had failed to determine the average volatile organic (VO) concentration of hazardous waste stored in the hazardous waste tank system at the point of waste origination in accordance with the Air Emission Standards for Tanks.
48. At the time of the CEI, the inspectors observed a red 30-gallon hazardous waste container marked with a D.O.T. placard for explosives in Building 13's CAA. The container was not labeled with an accumulation start date.
49. At the time of the CEI, the inspectors observed that the Respondent failed to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency in the MRF CAA and the Magazine 3 CAA.
50. At the time of the CEI, the inspectors requested the job titles with associated job descriptions for employees handling hazardous waste at the Facility. The Respondent failed to provide job titles with associated job descriptions for employees handling hazardous waste at the Facility.
51. At the time of the CEI, the inspectors' review of hazardous waste manifests and land disposal restriction notices revealed that the Respondent had failed to submit a land disposal restriction notice for hazardous waste shipped to General Dynamics - Ordinance and Tactical Systems (EPA ID #MOD685798164) located in Joplin, Missouri.
52. At the time of the CEI, the inspectors requested the written assessment of the hazardous waste tank system. The Respondent failed to provide a written assessment reviewed and certified by a qualified Professional Engineer attesting that the tank systems have sufficient structural

integrity and are acceptable for the storing and treating of hazardous waste; failed to provide a record of a qualified installation inspector or a qualified Professional Engineer inspecting the tank system or component prior to placing the system into service; and failed to provide a record of testing for tightness prior to a tank system being covered, enclosed, or placed in use.

53. During the Show Cause meeting on November 6, 2023, the Respondent stated that both hazardous waste tanks TK503 and TK3000 had been placed out of service and would not be placed back into service until both tanks undergo tank assessments by a certified Professional Engineer.

## V. ALLEGED VIOLATIONS

54. The Respondent is a “person” as defined in 401 KAR 39:005, Section 1(53) [40 C.F.R. § 260.10].
55. The Respondent is the “owner” and “operator” of a “facility” located in Graham, Kentucky as those terms are defined in 401 KAR 39:005, Section 1(51), (50), and (28) [40 C.F.R. § 260.10].
56. The Respondent is a “generator” of “hazardous waste” as those terms are defined in 401 KAR 39:005, Section 1(33) [40 C.F.R. § 260.10] and 401 KAR 39:060, Section 3(1) [40 C.F.R. § 261.3].
57. The Respondent operates “tanks” as defined in 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10].
58. The Respondent operates a “tank system” as defined in 401 KAR 39:005, Section 1 [40 C.F.R. § 260.10].
59. The Respondent failed to securely close multiple containers of hazardous waste in the MRF CAA. The EPA therefore alleges that the 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 the Respondent failed to comply with the container management requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(iv)], which is a condition of the LQG Permit Exemption.
60. The Respondent failed to conduct weekly inspections during the last week of December 2022 at the Facility’s CAAs. The EPA therefore alleges that the 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 the Respondent failed to comply with the container inspection requirement in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(1)(v)], which is a condition of the LQG permit exemption.
61. The Respondent failed to conduct daily hazardous waste tank inspections on several occasions in 2022 for hazardous waste tanks TK503 and TK3000 while the tanks were in service. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], by not complying with the daily inspection requirements of 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.195(a), (b), and(e)].

62. The Respondent failed to make a determination as to whether tank ancillary equipment contained or contacted a hazardous waste with an organic concentration that equaled or exceeded 10 percent by weight in accordance with the Air Emission Standards for Equipment Leaks. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], by not complying with the Air Emission Standards for Equipment Leaks set forth in 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1063(d)(1)-(3)].
63. The Respondent failed to determine the average VO concentration of a hazardous waste at the point of waste origination in accordance with the Air Emission Standards for Tanks. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], by not complying with the Air Emission Standards for Tanks set forth in 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.1084(a)].
64. The Respondent failed to label a hazardous waste container in Building 13's CAA with an accumulation start date. The EPA therefore alleges that the 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 the Respondent failed to meet a container management condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(5)(i)(C)], which is a condition of the LQG Permit Exemption.
65. The Respondent failed to maintain adequate aisle space for hazardous waste containers stored in the MRF CAA and in the Magazine 3 CAA. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(6)], by not complying with the aisle space requirements set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.255].
66. The Respondent failed to provide job titles with associated job descriptions for employees handling hazardous waste at the Facility. The EPA therefore alleges that the 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 the Respondent failed to comply with the personnel training requirements in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(7)(iv)], which is a condition of the LQG Permit Exemption.
67. The Respondent failed to submit a land disposal restriction notice for waste shipped to General Dynamics - Ordinance and Tactical Systems (EPA ID #MOD685798164) located in Joplin, Missouri. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in



401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(9)], by not complying with the applicable LDR requirements in 401 KAR 39:060, Section 4 [40 C.F.R. § 268.7].

68. The Respondent failed to provide documentation that the Respondent obtained a written tank assessment reviewed and certified by a qualified Professional Engineer attesting that the Respondent's tank system had sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; failed to provide documentation that, prior to placing the Respondent's tank system into use, an independent, qualified installation inspector, or a qualified Professional Engineer, trained and experienced in the proper installation of tank systems, inspected the system or components for defects; and failed to provide documentation that prior to the Respondent's tank system being covered, enclosed, or placed in use, it was tested for tightness. The EPA therefore alleges that the 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 the Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 KAR 39:080, Section 1(1) [40 C.F.R. § 262.17(a)(2)], by not complying with the tank requirements set forth in 401 KAR 39:090, Section 2(1) [40 C.F.R. § 265.192(a),(b), and (d)], which is a condition of the LQG Permit Exemption.

## VI. STIPULATIONS

69. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

70. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), the 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.

71. For the purpose of this proceeding, the Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against the Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering the 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 the 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 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.

72. By executing this CAFO, the Respondent certifies to the best of its knowledge that the Respondent is currently in compliance with all relevant requirements of the Kentucky Revised Statutes (KRS) Title XVIII, Chapter 224, Subchapter 46-Hazardous Waste, and Title 401 of the Kentucky Administrative Regulations (KAR), Chapter 39, the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.

73. 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**

74. The Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$110,980.00**, which is to be paid within 30 days of the Effective Date of this CAFO.

75. 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 the Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

- b. If the Respondent sends payment by non-standard mail delivery (e.g., FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

- c. If paying by EFT, the 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, NY 10045  
Beneficiary: Environmental Protection Agency

- d. If paying by ACH, the 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, MD 20737  
REX (Remittance Express): 1-866-234-5681

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

Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Kayla Acosta  
Enforcement and Compliance Assurance Division  
Chemical Safety and Land Enforcement Branch  
acosta.kayla@epa.gov

77. "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 EPA

requirements, in the amount due, and identified with the Facility name and Docket No. **RCRA-04-2024-4006(b)**.

78. In addition to what is stated in the prior Paragraph, if the 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 (*see* 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 (*see* 40 C.F.R. Part 13, Subparts C and H);
  - c. suspend or revoke the Respondent's licenses or other privileges, or suspend or disqualify the Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 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.
79. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
80. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send a completed Form 1098-F ("Fines, Penalties, and Other Amounts") to the Internal Revenue Service (IRS) annually with respect to any court order and settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (for example, a copy of Form 1098-F). In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and the Respondent herein agrees, that:
- a. The Respondent shall complete a Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. The Respondent shall therein certify that its completed Form W-9 includes the Respondent's correct Tax Identification Number (TIN) or that the Respondent has applied and is waiting for issuance of a TIN;
  - c. The Respondent shall email its completed Form W-9 to the EPA's Cincinnati Finance Center Region 4 contact, Jessica Henderson ([Henderson.Jessica@epa.gov](mailto:Henderson.Jessica@epa.gov)), on or before

the date that the Respondent's initial penalty payment is due, pursuant to Paragraph 74 of this CAFO, and the EPA recommends encrypting Form W-9 email correspondence; and

- d. In the event that the Respondent has certified in its completed Form W-9 that it has applied for a TIN and that TIN has not been issued to the Respondent by the date that its initial penalty payment is due, then the Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify the EPA's Cincinnati Finance Center of this fact, via email, by the date that the Respondent's initial penalty payment is due; and
  - ii. provide the EPA's Cincinnati Finance Center with the Respondent's TIN, via email, within five (5) days of the Respondent's issuance and receipt of the TIN.

81. Failure to comply with providing Form W-9 or TIN may subject the Respondent to a penalty. See 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

#### **VIII. EFFECT OF CAFO**

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

83. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but 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. 40 C.F.R. § 22.18(c).

84. 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).

85. Nothing in this CAFO shall relieve the 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.

86. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

87. 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.

88. The provisions of this CAFO shall apply to and be binding upon the Respondent and its successors and assigns. The Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
89. 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 the Respondent's obligations and responsibilities under this CAFO.
90. By signing this Consent Agreement, the 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.
91. By signing this Consent Agreement, the Complainant and the undersigned representative of the Respondent each certify that one is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party one represents to this CAFO.
92. 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.
93. By signing this Consent Agreement, the 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. The 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.
94. 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 the 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 the Respondent notice of its intent to revoke, which shall not be effective until received by the Respondent in writing.
95. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
96. 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**

97. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional 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 **Ensign-Bickford Aerospace & Defense Company**, Docket No. **RCRA-04-2024-4006(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Chad J. Thompson  
Signature

26 August, 2024  
Date

Printed Name: Chad J. Thompson

Title: President, EBAD

Address: 640 Hopmeadow Street, Simsbury CT 06070



The foregoing Consent Agreement In the Matter of **Ensign-Bickford Aerospace & Defense Company**, Docket No. **RCRA-04-2024-4006(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

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Keriema S. Newman, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Ensign-Bickford Aerospace & Defense  
Company,  
500 Bickford Road  
EPA ID No.: KYR000032102**

Respondent.

Docket No. **RCRA-04-2024-4006(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 the 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.**

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Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **Ensign-Bickford Aerospace & Defense Company**, Docket No. **RCRA-04-2024-4006(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: P. Cary Franklin  
Director of Operations  
Ensign-Bickford Aerospace & Defense Company  
ccfranklin@ebad.com  
500 Bickford Road, Graham, Kentucky 42344  
270-377-3206

To EPA: Kayla Acosta  
Physical Scientist  
acosta.kayla@epa.gov  
404-562-8451

F. Marshall Binford  
Associate Regional Counsel  
binford.marshall@epa.gov  
404-562-9543

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Shannon L. Richardson, Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov