UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of:	)	**EPA Docket No. RCRA-01-2018-0068**
	)	
	)	
Polycarbon Industries, Inc.	)	
9 Opportunity Way	)	
Newburyport, MA	)	
	)	
	)	
Respondent	)	
	)	
Proceeding under Section 3008(a) of the	)	
Resource Conservation Recovery Act	)	
42 U.S.C. § 6928(a)	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint herein on September 28, 2018, against Respondent Polycarbon Industries, Inc. ("Respondent") under the Resource Conservation and Recovery Act ("RCRA"); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding to obtain compliance with RCRA and for the assessment of a civil penalty pursuant to Sections 3008(a) and (g) of RCRA.

2. The Complaint alleges that Respondent violated Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, Chapter 21 C of the Massachusetts General Laws and the regulations promulgated thereunder found at Title 310, Chapter 30 of the Code of Massachusetts Regulations set forth at 310 C.M.R. 30.001 *et seq.*

3. This CAFO shall apply to and be binding upon EPA and Respondent, its officers, employees, successors and assigns.

4. For the purpose of this CAFO, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in the Complaint, and without admitting or denying liability as to any claim alleged in the Complaint, Respondent consents for purposes of settlement to the terms of this CAFO.

5. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint, and waives its right to appeal the Final Order accompanying this Consent Agreement.

II. TERMS OF SETTLEMENT

6. Respondent certifies that when it completes the compliance measures set forth in subparagraphs a. through g. below, its facility located in Newburyport, Massachusetts shall be in compliance with Sections 3002 and 3005 of RCRA and the federal and state hazardous waste regulations promulgated thereunder:

a. Respondent has placed and will continue to place accumulation dates on containers of hazardous waste, in accordance with 310 C.M.R. 30.341(2)(d).

b. With respect to tanks EDW2 KOP2, PFN2/EDW3 KOP2, EDW4 KOP and HW101 ("Covered Tanks"), within 60 days of the effective date of this CAFO, Respondent shall achieve and maintain compliance with hazardous waste tank standards, in accordance with the requirements of 310 C.M.R. 30.341(2), and 30.690, *et seq.*, as referenced by 310 C.M.R. 30.343(1), including obtaining a written assessment of the Covered Tanks, in accordance with 310 C.M.R. 30.692, that has been reviewed and certified by a Massachusetts registered professional engineer, in accordance with 310 C.M.R. 30.009, and that attests to the integrity of the Covered Tanks. Based on EPA's observations during the inspection of Respondent's facility and Respondent's representations to EPA regarding the configuration of the Covered Tanks, as of the effective date of this CAFO, EPA agrees that the Covered Tanks, as currently configured, can comply with the requirements of 310 C.M.R. 30.341(2) and 30.690, *et seq.*, as referenced by 310 C.M.R 30.343(1). Any changes to Respondent's tanks or operations after the effective date of this CAFO affecting the Covered Tanks may change the compliance status of the Covered Tanks.

c. Within 60 days of the effective date of this CAFO, Respondent shall commence compliance with 40 C.F.R. Part 265, Subpart BB ("Subpart BB") with respect to the Covered Tanks and their ancillary equipment, including, but not limited to the following Subpart BB requirements:

i. Marking of each piece of equipment subject to Subpart BB requirements in such a manner that it can be distinguished readily from other pieces of equipment, in accordance with the requirements of 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [40

C.F.R. § 262.17(a)(2)].

ii. Compliance with Subpart BB for valves in light liquid service and for pumps and flanges, in accordance with the requirements of 40 C.F.R. §§ 265.1052(a)(1), (a)(2), and 40 C.F.R. § 265.1057(a), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [40 C.F.R. § 262.17(a)(2)].

iii. Compliance with Subpart BB recordkeeping requirements, in accordance with 40 C.F.R. §§ 265.1064, as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [40 C.F.R. § 262.17(a)(2)].

d. Within 120 days of the effective date of this CAFO, Respondent shall demonstrate compliance with Subpart BB requirements by submitting to EPA copies of records developed and maintained pursuant to 40 C.F.R. § 265.1064.

e. Based on EPA's inspection of Respondent's facility, facility diagrams submitted to EPA, and Respondent's representations to EPA, EPA agrees that the Covered Tanks, as currently configured, can comply with 40 C.F.R. Part 265, Subpart CC ("Subpart CC"). Any changes to Respondent's operations after the effective date of this CAFO affecting the Covered Tanks may change the compliance status of the Covered Tanks.

f. Within 60 days of the effective date of this CAFO, Respondent shall commence compliance with the requirements of Subpart CC for the Covered Tanks. Within 120 days of the effective date of this CAFO, Respondent shall demonstrate compliance with Subpart CC requirements by submitting to EPA copies of records developed and maintained pursuant to 40 C.F.R. § 265.1090.

g. Within 60 days of the effective date of his CAFO, Respondent shall commence compliance with the personnel training requirements of 40 C.F.R. § 265.16, as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [40 C.F.R. § 262.17(a)(2)], specifically, with respect to personnel involved in Subparts BB and CC compliance. Within 120 days of the effective date of this

CAFO, Respondent shall demonstrate compliance with the personnel training requirements of 40 C.F.R. § 265.16 by submitting to EPA copies of the records required to be maintained in 40 C.F.R. § 265.16(d)(1) through (3) for personnel involved in Subparts BB and CC compliance.

h. Based on EPA's inspection of Respondent's facility, facility diagrams submitted to EPA, and Respondent's representations to EPA of the operations at its Newburyport facility as of the effective date of this CAFO, EPA agrees that tanks PFN1 KOP and PFN3 KOP3 are part of the manufacturing process, and, therefore, are not subject to RCRA requirements. Any material changes to Respondent's operations after the effective date of this CAFO affecting these two tanks may make them subject to RCRA regulation.

7. Pursuant to Section 3008 of RCRA, based upon the nature of the alleged violations, Respondent's agreement to perform two Supplemental Environmental Projects ("SEPs"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of fifty thousand two hundred ten dollars and fifty cents ($50,210.50).

8. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEPs.

9. a. Respondent shall pay the penalty of $50,210.50 within thirty (30) days of the effective date of this CAFO. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of Polycarbon Industries, Inc.*, Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (RCRA-01-2018-0068), and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. At the time of the payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORC 4-6
Boston, MA 02109-3912

and

Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-2
Boston, MA 02109-3912

c. Respondent shall pay interest on a late payment pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

10. Respondent shall complete two SEPs. The first SEP consists of purchasing and installing an indoor air emission monitoring system called the Neutronics Multi-Channel Analyzer that will monitor emissions in manufacturing and laboratory areas of Respondent's facility ("Neutronics SEP"). The second SEP shall consist of planting trees in Newburyport, Massachusetts ("Phyto-Pollution Reduction SEP"). The SEPs are intended to secure significant environmental and public health protection and benefits by (1) protecting workers and the environment through monitoring emissions at the facility (for the Neutronics SEP), and (2) reducing pollution (for the Phyto-Pollution Reduction SEP). These projects are further described in and shall be implemented in accordance with the Scopes of Work ("SOWs") attached to and incorporated into this CAFO as Attachment A.

11. Respondent shall satisfactorily complete the Neutronics SEP by December 1, 2020, and the Phyto-Pollution SEP by November 15, 2021 ("SEP Completion Dates"), in accordance with Attachment A. EPA may, in its sole discretion, extend the SEP completion dates for good cause shown by Respondent in writing. The combined expenditure for the SEPs shall be not less than and is not required to be more than $152,425.00 in eligible SEP costs ("Total SEP Costs"). The total expenditure for the Neutronics SEP is expected to be $111,693. The total expenditure for the Phyto-Pollution SEP will be the difference between Total SEP Costs and the cost of the Neutronics SEP, and is expected to be $40,732. "Satisfactory completion" of the Neutronics SEP shall mean (a) completion of the wiring necessary to install the Neutronics system described

in Attachment A; (b) the purchase, installation and operation of the Neutronics system described in Attachment A and in accordance with the schedule set forth in Attachment A; and (c) the expenditure of $111,693 by Respondent in eligible SEP costs for purposes of carrying out the Neutronics SEP in accordance with this CAFO and Attachment A. "Satisfactory Completion" of the Phyto-Pollution Reduction SEP shall mean (a) planting approximately 63 trees in Newburyport, Massachusetts in accordance with Attachment A and in accordance with the schedule set forth in Attachment; and (b) the expenditure of approximately $40,732 by Respondent in eligible SEP costs. Respondent shall include documentation of all the expenditures made in connection with the SEPs as part of the SEP Completion Reports described below.

12. Upon completion of each SEP, Respondent shall submit a SEP Completion Report, as specified in paragraph 14 below.

13. Respondent hereby certifies as follows:

a. that, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum.

b. that Respondent is not party to any open federal financial assistance transaction that is funding or could be used to fund the same activities as the SEPs. To the best of Respondent's knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activities as the SEPs. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-

guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

c. the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. Respondent has not received and will not receive credit for the SEPs in any other enforcement action;

e. Respondent has not received and will not receive any reimbursement for any portion of the SEP from any other person or entity; and

f. all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the Neutronics SEP is at least $111,693, and the cost to implement the Phyto-Pollution Reduction SEP is $40,732;

g. for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenses incurred in completing the SEPs.

14. a. Respondent shall submit to EPA semi-annual SEP Progress Reports describing the progress of each SEP beginning on December 30, 2019, until both SEPs are completed. Each SEP Progress Report shall include the following information as to each SEP:

i. a detailed description of the SEP activities completed during the preceding six-month period;

ii. a description of the work that is anticipated to be completed during the next six-month period; and

iii. a detailed description of any problems encountered in implementing the SEP during the six-month period, and if they exist, the solutions thereto.

b. Respondent shall submit a SEP Completion Report no later than December 30, 2020 for the Neutronics SEP, and no later than December 15, 2021 for the Phyto-Pollution Reduction SEP. Each SEP Completion Report shall include the following information:

i. a detailed description of the SEP as implemented. For the Neutronics SEP, include photographs of the installed equipment with locations identified. For the Phyto-Pollution Reduction SEP, include a list of the addresses where the trees have been planted, the species planted at each location, and the date each tree was planted. For trees planted in Spring 2020, Fall 2020, or Spring 2021, indicate the number of trees that failed, if any, and the number of trees that were replaced, if any;

ii. a description of any implementation problems encountered during the last reporting period and the solutions thereto;

iii. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such; and

iv. an explanation of the environmental benefits of the SEP.

15. In itemizing costs in the SEP Completion Reports, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. For purposes of this paragraph, "acceptable documentation" includes, without limitation, invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or

services for which payment was made and an accounting of goods and services provided by Respondent's contractors and vendors. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made. Where a SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such.

16. Respondent agrees that failure to submit the SEP Progress Report(s) and SEP Completion Reports in accordance with the requirements of paragraph 14 above, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 21 below.

17. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail, overnight delivery, or by electronic mail in PDF format to:

Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORC 4-2)
Boston, Massachusetts 02109
simpson.andrea@epa.gov

and to:

Linda Brolin
Environmental Engineer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ECAD 5-4)
Boston, Massachusetts 02109
brolin.linda@epa.gov

The date of submission of each required notice or report shall be deemed the date on which such notice or report is received by EPA.

18. Respondent shall maintain legible copies of all documentation relating to the SEPs and all documents or reports submitted to EPA pursuant to this CAFO for a period of three (3)

years after completion of all requirements set forth in this CAFO. All documents or reports, including, without limitation, the SEP Completion Reports, submitted to EPA pursuant to this CAFO, shall be signed by a responsible corporate officer of Respondent, and contain the following certification:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. After receipt of the SEP Completion Reports described in paragraph 15 above, EPA will notify Respondent, in writing: (i) indicating that the projects have been completed satisfactorily in accordance with paragraph 11 of this CAFO and Attachment A; or (ii) identifying any deficiencies from paragraphs 11 and 14 of this CAFO and Attachment A in a SEP Completion Report and granting Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determining that a one or both projects have not been completed satisfactorily in accordance with paragraph 11 of this CAFO and Attachment A, and seeking stipulated penalties in accordance with paragraphs 21 through 24 below.

20. If EPA elects to exercise option (ii) in paragraph 19 above (i.e., if a SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself), Respondent may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to a SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of

the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements for adequate completion of the SEP imposed by EPA in its written statement. In the event one or both of the SEPs are not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraphs 21 through 24 below.

21. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs described in paragraphs 10, 11, 12 and 14 above, and in Attachment A, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. for failure to submit a required SEP Progress Report, and/or a SEP Completion Report, Respondent shall pay $300 per day for the first thirty (30) days of violation; $500 for the next sixty (60) days of violation; and $750 per day for each day of violation thereafter until the deadline is achieved or the report is submitted;

b. for failure to satisfactorily complete either SEP as described in this CAFO and Attachment A, Respondent shall pay $500 per day for the first thirty (30) days of violation and $1,000 per day for each day thereafter, but the total stipulated penalty in this subsection b. shall not exceed $134,020 for the Neutronics SEP and $48,878 for the Phyto-Pollution Reduction SEP.

22. The determination as to whether a SEP has been satisfactorily completed in accordance with paragraph 11 of this CAFO and Attachment A shall be in the sole discretion of EPA, subject to the Dispute Resolution provision set forth in paragraphs 25 through 27 below.

23. Stipulated penalties as set forth in paragraph 21 above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion

of the activity. EPA may, in its sole discretion, elect not to seek stipulated penalties or elect to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

24. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The payment shall be made by remitting a check or making an electronic payment in accordance with the electronic payment provision in paragraph 9.a. above. If making a payment by check, Respondent shall submit a certified or cashier's check payable to the order of the "Treasurer, United States of America," referencing the case name and docket numbers of this action on the face of the check, to:

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

Respondent shall provide copies of each check, or notice of an electronic payment by first class mail or overnight delivery to:

Wanda Santiago
Regional Hearing Clerk (Mail Code ORC 4-6)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Andrea Simpson
Senior Enforcement Counsel (Mail Code ORC 4-2)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Interest and late charges shall be paid as stated in paragraph 35 below.

25. All disputes arising from this CAFO, except for a dispute relating to the payment of the penalty, shall be resolved pursuant to this Dispute Resolution provision. The parties to this

CAFO shall attempt to resolve, expeditiously and informally, any disagreement concerning this CAFO, including the SEPs. If Respondent objects to any EPA action taken pursuant to this CAFO, Respondent shall notify EPA in writing of its objection and the reasons for the objection within ten (10) days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which the Respondent relies (hereinafter "Statement of Position").

26. EPA and Respondent shall attempt to resolve the dispute through negotiations ("Negotiation Period"). The Negotiation Period shall not exceed thirty (30) days from EPA's receipt of Respondent's written objection and Statement of Position. The Negotiation Period may be extended by written agreement of the parties.

27. Any agreement reached by the parties pursuant to this Dispute Resolution provision shall be in writing, signed by both parties, and shall, upon signature by both parties, be incorporated into and become an enforceable element of this CAFO. If the parties are unable to reach an agreement within the Negotiation Period, the Chief, Legal Enforcement Branch, Office of Regional Counsel ("Branch Chief"), will issue a written decision on the dispute to Respondent. The Branch Chief's decision shall be considered binding and shall be incorporated into and become an enforceable element of this Agreement upon Respondent's receipt of the Branch Chief's decision regarding the dispute.

28. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this

agreement is based, or for Respondent's violation of any applicable provision of law, except as provided in paragraph 32 of this CAFO.

29. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Resource Conservation and Recovery Act."

30. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

31. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology purchased by Respondent in connection with the SEPs undertaken pursuant to this CAFO.

32. This CAFO constitutes a settlement by EPA of all claims for liability and civil penalties pursuant to RCRA, including pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for all the violations alleged in the Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, to which Respondent reserves all rights, privileges and defenses. Nothing in the

CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, to which Respondent reserves all rights, privileges and defenses.

33. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

34. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

35. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For Complainant:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1

Date: August 27, 2019

For Respondent:

Paul Sulloway
Chief Financial Officer
Polycarbon Industries, Inc.

Date: August 23, 2019

FINAL ORDER

Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes EPA to compromise with or without conditions the maximum civil penalties which may be imposed under that Section. EPA has made such a compromise by applying the penalty factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to the facts and circumstances of this case, including the seriousness of the violations and any good faith efforts to comply with the applicable requirements.

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Polycarbon Industries, Inc., is ordered to comply with the terms of the above Consent Agreement which will become effective on the date it is filed with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

September 5, 2019
Date

Polycarbon Industries, Inc.
Docket No. RCRA-01-2018-0068

ATTACHMENT A TO CONSENT AGREEMENT AND FINAL ORDER SUPPLEMENTAL ENVIRONMENTAL PROJECTS - SCOPE OF WORK

I. Supplemental Environmental Projects

A. Respondent PCI shall implement the following two Supplemental Environmental Projects ("SEPs"):

1. Neutronics SEP. The Neutronics SEP consists of purchasing, installing and operating an indoor air emission monitoring system called the Neutronics Multi-Channel Analyzer ("MCA") that will monitor emissions in manufacturing and laboratory areas of Respondent's facility.

2. Phyto-Pollution Reduction SEP. The Phyto-Pollution Reduction SEP consists of planting trees in Newburyport, Massachusetts.

B. PCI shall expend a total of not less than but is not required to spend more than $152,425 in SEP Eligible Funds for the two SEPs. If EPA determines that PCI has not spent sufficient SEP Eligible Funds, PCI shall supplement the amount spent by expanding the Phyto-Pollution Reduction SEP to plant additional trees sufficient to meet the requisite total.

II. Neutronics SEP

A. Purpose of Neutronics SEP: The Neutronics SEP will allow real-time monitoring of volatile organic compound emissions or leaks of gases from the PCI facility.

B. Scope of Neutronics SEP

1. The new MCA system shall include sensors/transmitters for remote monitoring of flammable and toxic gases in different areas within the Production Areas and the Quality Control laboratories, as indicated in the attached diagrams.

2. Each of the new MCA control units shall have the capacity to monitor numerous remote sensors. This SEP will allow for real time monitoring remotely online with internal data logging with three months of storage, audible and visual alarms and graphic displays. The specific locations of the MCAs and the sensors are set forth in the attached diagrams (Exhibit 1).

C. Neutronics SEP Project Schedule. PCI shall complete the Neutronics SEP by December 1, 2020.

D. Neutronics SEP Reports

1. PCI shall submit to EPA semi-annual progress reports beginning on December 30, 2019, in accordance with paragraph 15.a. of the Consent Agreement and Final Order ("CAFO").

2. By December 30, 2020, PCI shall submit a Neutronics SEP Completion Report in accordance with paragraph 15.b. of the CAFO.

III. Phyto-Pollution Reduction SEP.

A. Purpose of Phyto-Pollution Reduction SEP

1. The purpose of this SEP is to improve air quality and achieve other environmental benefits in certain environmental justice or environmentally fragile areas ("Areas") within the City of Newburyport ("City"), Massachusetts through the planting of trees in those Areas. The trees will be planted by the Newburyport Tree Commission during four planting seasons in 2020 and 2021, as set forth in Exhibit 2 attached hereto, which contains a general description of this SEP.

2. The environmental benefits are expected to include, among others, the reduction of ozone, nitrogen dioxide, sulfur dioxide, and particulates, as well as the generation of oxygen, resulting in improved air quality; the reduction of carbon dioxide, a greenhouse gas, and associated carbon sequestration; and reducing storm water run-off.

3. The SEP will supplement the number of trees that would normally be planted in the Areas by the City of Newburyport using its own funds. Therefore, the City will not reduce the amount of its own funds expended for tree planting in the Areas as a result of the SEP.

B. Scope of Phyto-Pollution Reduction SEP

1. PCI shall ensure that approximately 63 trees are planted in the Areas. The exact number of trees will depend upon the final cost of the Neutronics SEP. PCI shall spend the difference between the cost of the Neutronics SEP and $152,425 for the Phyto-Pollution Reduction SEP. The average cost of one tree is $650, including the cost to purchase and plant the tree.

2. The Areas are identified by the City Tree Commission in Exhibit 2.

3. The City will determine in which specific Areas trees will be planted and the number of trees per Area. The trees shall be chosen from the species listed on the City Tree Commission website, as determined by the City.

4. The trees planted under this SEP shall be covered by the three-month warranty provided by the tree nursery used by the City.

5. PCI may enter into an agreement with the City in connection with the management or implementation of this SEP, which will use its own contractors to implement this SEP. However, PCI shall have the ultimate responsibility for successful completion of this SEP.

6. In implementing this SEP, PCI expects to spend approximately $40,732 in Eligible SEP Costs. Payments to implement this SEP will be made by PCI to the City for use by the City solely for purposes of this SEP. For this SEP, SEP Eligible Costs shall include amounts paid to contractors for the planting of trees pursuant to this SEP and for work directly related to such planting. SEP Eligible Costs shall not include administrative costs incurred by PCI, the City, or the Newburyport Tree Commission in connection with this SEP.

C. Phyto-Pollution Reduction SEP Project Schedule

1. The SEP shall be implemented in phases:

   a. Approximately 35 trees shall be planted during spring 2020 and fall 2020.

   b. Approximately 28 trees shall be planted during spring 2021 and fall 2021.

2. The phasing set forth above may be revised to account for the availability of trees and other factors, as long as approximately 63 trees are planted by November 15, 2021.

3. The trees planted during each phase of planting shall be monitored so that if a planted tree fails within the warranty period, it shall be replaced; provided, however, that this provision shall not require PCI to spend more than the amount required for the Phyto-Pollution Reduction SEP as provided in III.B.1.

D. Phyto-Pollution Reduction SEP Reports

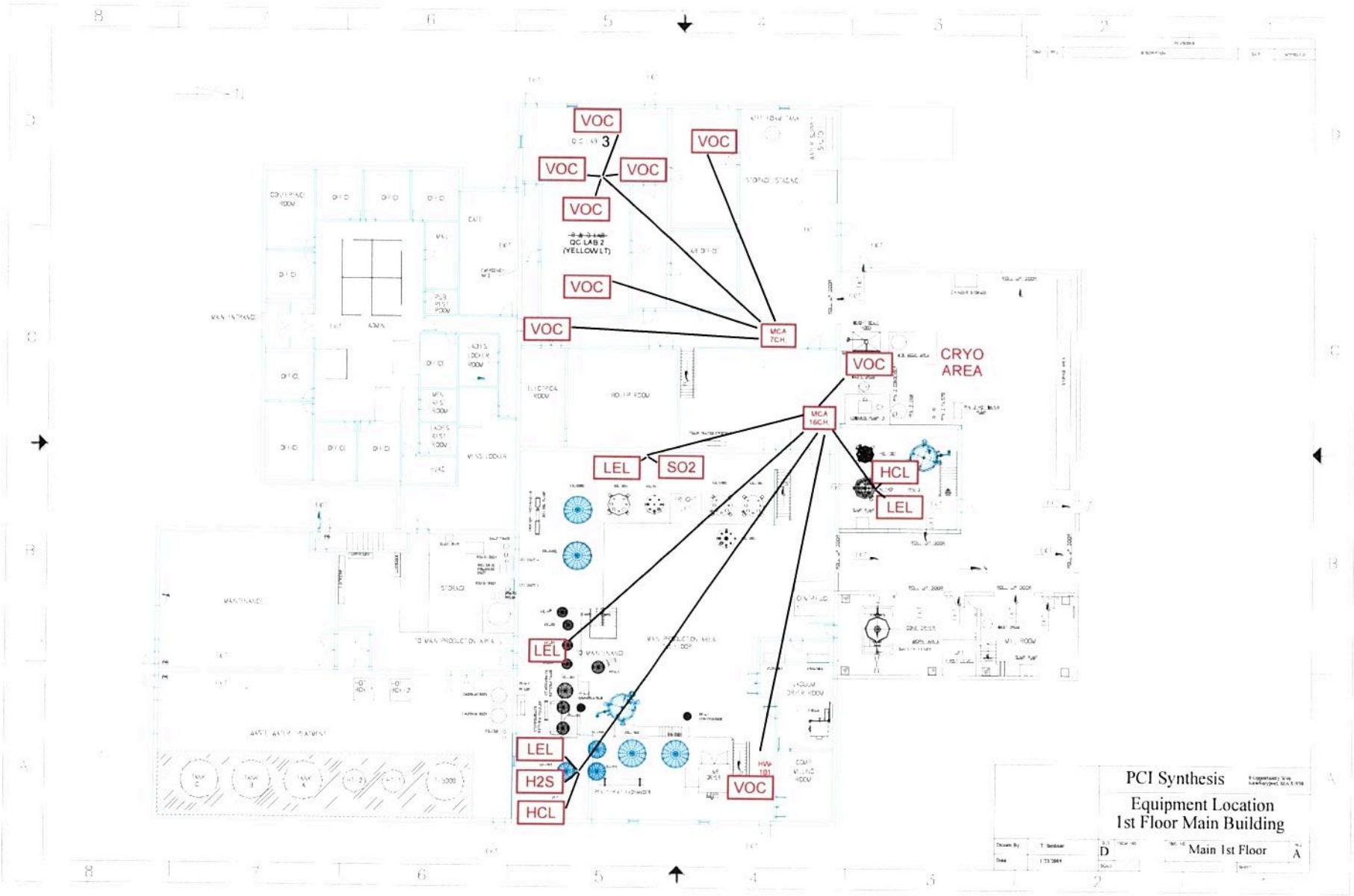
1. PCI shall submit to EPA semi-annual progress reports beginning on December 30, 2019, in accordance with paragraph 15.a. of the CAFO.

2. By December 15, 2021, PCI shall submit a SEP Completion Report to EPA in accordance with paragraph 15.b. of the CAFO.

E. Alternative SEP

EPA and PCI recognize that implementation of the Phyto-Pollution Reduction SEP requires final approval by the City of Newburyport City Council. If the City Council does not approve, and thus PCI is unable to implement the Phyto-Pollution Reduction SEP, then within 90 days of the City Council's final decision, PCI shall propose an Alternative SEP to EPA for its review. Provided PCI timely

proposes an Alternative SEP, the failure to implement and complete the Phyto-Pollution Reduction SEP because the City Council does not approve the Phyto-Pollution Reduction SEP shall not be a basis for stipulated penalties under paragraph 21 of the Consent Agreement and Final Order (CAFO). If the parties agree on an Alternative SEP and the schedule for implementing it, the agreement shall be in writing, signed by both parties, and shall, upon signature by both parties, be incorporated into and become an enforceable element of this CAFO. If the parties cannot agree on an Alternative SEP, then PCI shall pay a penalty in the amount of $32,586, plus interest from the effective date of the CAFO (as provided in paragraph 33 of the CAFO), to be paid within 30 days of the date of EPA's written determination to PCI that an Alternative SEP is not feasible (including an explanation of EPA's rationale for the determination), and that a penalty is due and payable to EPA. Disputes related to the Alternative SEP shall be resolved by Dispute Resolution under paragraphs 25-27 of the CAFO.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QC LAB 2 (YELLOW LT)
PCI Synthesis
Equipment Location
1st Floor Main Building
Main 1st Floor
D
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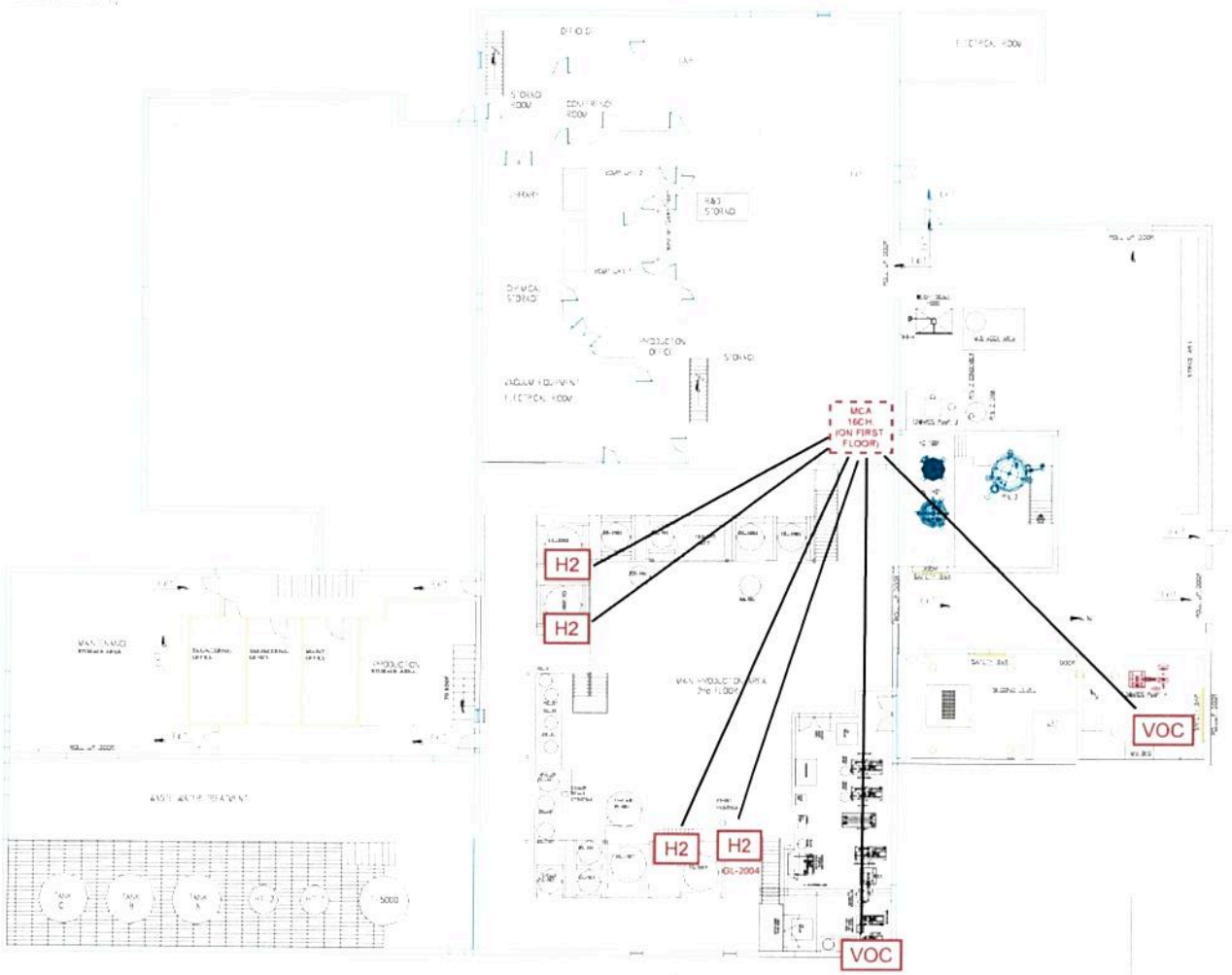

PCI Synthesis

Equipment Location
2nd Floor Main Building

Main 1st Floor

Newburyport Tree Commission

The Newburyport Tree Commission is a volunteer group consisting of seven voting members and 2 alternates appointed by the Mayor with the approval of the City Council. The mission of the Commission is to select, plant, protect, maintain, plan for and increase the health, beauty, quantity, diversity and vitality of Newburyport Trees.
The Newburyport Tree Commission was granted funds by the city in fiscal year 2020 (began July 2019) to serve that mission and plant 30 new trees throughout the city.
In June 2019, the Tree Commission was contacted by PCI Synthesis to fund approximately 63 new trees throughout Newburyport as part of a settlement of an enforcement action with the US EPA.

We propose the following:

- Plant approximately 63 additional trees in several Environmental Justice Areas across the city including low income housing projects and wetland areas. These areas may include:
    - Sullivan Building, State controlled for the Elderly and Disabled
    - Horton Terrace, Federal controlled for the Low income
    - Kelleher Park, State controlled for the Low income
    - Individual houses controlled by the State for the Low income and disadvantaged on Milk, Simmons, Storey, Titcomb & Woodland Streets
    - Wetlands at the Newburyport Business Park
    - Plum Island
- The timeline would begin in Spring 2020 through Fall 2021
- The Commission only plants trees in Spring and Fall to ensure success
- The average cost of a tree for our program is $650 including the cost to purchase and plant the tree.
- All trees would be planted in new planting sites and would not be planted over stumps of previous trees
- The Commission's policy is to plant trees of a minimum DBH (diameter at breast height) of 1.75" leading to a failure rate of less than 5% over the last 5 years
- The Commission only plants trees that are proven to be successful in our USDA planting zone and have shown to be sufficiently salt-tolerant to thrive on our streets. The Commission has a list of acceptable trees which can be found on our website below. All trees selected will be taken from this list.
  https://www.cityofnewburyport.com/sites/newburyportma/files/pages/2018_recommended_street_trees.pdf
- These funds will be subject to approval by the Newburyport City Council

Constance Preston Chair, Newburyport Tree Commission

Constance Preston 22 Aug 2019