

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



STATE OF CONNECTICUT

V.

AMBION CORPORATION

CONSENT ORDER no. COWSWDH 11003

Date Issued: February 3, 2011

- A. With the agreement of Ambion Corporation, ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:
1. Respondent is a chemical manufacturer and distributor, at 37 Naugatuck Drive, Naugatuck, Connecticut ("the site").
 2. Respondent is or has been a generator of hazardous waste at the site.
 3. Based on inspections conducted by the Department of Environmental Protection, Waste Engineering and Enforcement Division on May 11, 2000, March 11, 2004 and August 26, 2008, Respondent:
 - a. Failed to perform complete hazardous waste determinations on all wastes generated at the site as required by the Regulations of Connecticut State Agencies ("RCSA") section 22a-449(c)-102(a)(1), incorporating Title 40 of the Code of Federal Regulations ("40 CFR") section 262.11. Specifically, hazardous waste determinations were required for the evaporator sludge and floor spill waste discovered during the May 11, 2000 inspection, the wash water being generated as of the time of the March 11, 2004 inspection, and the floor sweeps being generated as of the time of the August 26, 2008 inspection.
 - b. Failed to maintain and operate its hazardous waste facility so as to minimize the possibility of an unplanned release, as required by RCSA section 22a-449(c)-105(a)(1), incorporating 40 CFR 265.31. Specifically, during the March 11, 2004 inspection, several containers of unused chemicals, dating back to 1985 and earlier, were observed to be in poor condition, with several stains observed on the floors of the storage areas. There were also thirty unlabeled plastic 55-gallon drums with contents being stored outdoors. On March 8, 2004, an eight-year old

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drum of dry, powdered sodium chlorite was the subject of a "slow burn" incident, which created a hazardous condition at the facility.

- c. Failed to place its universal waste lamps in containers or packages as required by RCSA section 22a-449(c)-113(a)(2)(G), incorporating 40 CFR 273.13(d)(1) with specified changes. Specifically, Respondent has been disposing of its mercury-containing lamps in the trash.
 - d. Failed to properly dispose of universal waste lamps as required by RCSA section 22a-449(c)-113(a)(1), incorporating 40 CFR 273.18(a). Specifically, Respondent has been disposing of its mercury-containing lamps in the trash.
4. On August 1, 2000, the Department of Environmental Protection issued Notice of Violation no. 1090 to Respondent to correct the violations listed in paragraphs A.3.a., A.3.c. and A.3.d. of this consent order.
 5. On December 4, 2008, the Department of Environmental Protection issued a Notice of Noncompliance to Respondent to correct the violations listed in paragraphs A.3.a. through A.3.d. of this consent order. The Notice of Noncompliance required Respondent to submit documentation demonstrating correction of the violations by December 31, 2008.
 6. Based on documentation submitted to the Department of Environmental Protection on behalf of Respondent submitted on August 31, September 30, and October 31, 2000; April 7, May 17 and October 25, 2004; January 7, June 15 and July 11, 2005; October 10, 2008; and April 7, 2009, Respondent has corrected the violation alleged in paragraph A.3.a.
 7. By virtue of the information in paragraphs A.3. through A.6. above, Respondent has violated RCSA sections 22a-449(c)-100 through 119, incorporating 40 CFR 260 through 279.
 8. By agreeing to the issuance of this Consent Order, Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1. and A.2. above.
- B. With the agreement of Respondent, the Commissioner, acting under sections 22a-6, 22a-131 and 22a-449 of the Connecticut General Statutes, orders Respondent as follows:
1. Compliance Assurance: Respondent shall correct all violations identified in paragraph A.3. above and shall maintain its compliance with all applicable provisions of the hazardous waste management regulations, RCSA sections 22a-449(c)-100, et seq., including but not limited to those regulations applicable to generators of hazardous waste identified in paragraph A.3. above. In particular,

- a. Respondent has retained ALTA Environmental Corporation to prepare the documents and implement or oversee the actions required by this consent order. Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this consent order is fully complied with, and, within ten (10) days after retaining any consultant other than the one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant. Respondent shall submit to the Commissioner a description of (a) consultant(s)'s education, experience and training which is relevant to the work required by this consent order within ten (10) days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
- b. On or before **sixty (60)** days after issuance of this consent order, Respondent shall perform all actions which the Commissioner alleges it failed to perform as specified in paragraphs A.3.b., A.3.c. and A.3.d. of this consent order and submit for the Commissioner's review and written approval certification of compliance with the waste handling requirements specified in these paragraphs, and documentation demonstrating such compliance.
- c. Submission of schedule. On or before **seventy-five (75)** days after issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a proposed schedule for the following activities:
 - i. Submission of a report, for the Commissioner's review and written approval, which contains an inventory and characterization of all wastes on the site at the time of the report's preparation as detailed below. The report shall address at least the following:
 1. A detailed identification of the type, quantity, location on site, or, if no longer on site, the disposition of all wastes which have been on site at any time from and including August 26, 2008. This report must also include a complete inventory of the approximately 130 containers and 25 boxes of chemicals being stored along the east wall of the manufacturing building at the time of the August 2008 inspection, and the 30 unlabeled, plastic 55-gallon drums with contents which were being stored outdoors at the time of the March 11, 2004 inspection and remained on site at the time of the August 26, 2008 inspection.. The inventory must also include the floor spill waste and evaporator sludge found during the May 11, 2000 inspection, the wash water being generated as of the March 11, 2004 inspection, and the floor sweeps being generated as of the August 26, 2008 inspection. All containers on site holding waste or the chemicals described above at the time that the inventory is prepared must be marked so they can easily be identified on the inventory. The inventory must include the container identification number, the size and condition (intact,

rusted, salt-encrusted, etc.) of each container, a description of its contents and whether the chemical can be used or must be disposed of as waste.

2. A detailed discussion of why the contents of each of the containers identified under paragraph B.1.c. i. 1. above is not a solid waste, with documentation supporting such discussion and considering such factors as visible condition of the container and its contents, shelf life of the chemical (if any), quantity of the specific chemical on site, and whether or not the chemical is usable to Respondent or another party as an ingredient, product or effective substitute for a product. All materials that are not wastes must be specifically identified, and documentation must be maintained on site regarding the disposition of any usable materials that are sold or given to another party for use as an ingredient, product or effective substitute for a product. The documentation shall identify the name, address and phone number of the party receiving the usable material, the intended use of the usable material by the party, and any monies exchanged between parties as a result of the sale or transfer of this product.
 3. The results, with supporting documentation (including analytical data, as appropriate), of a hazardous waste determination performed on each waste identified under paragraph B.1.c. i. 1. above.
 4. A proposed plan and schedule for the expeditious removal and proper disposal of all wastes which are not being managed in accordance with RCRA sections 22a-449(c)-100, et. seq., including but not limited to hazardous waste accumulated on site for more than ninety (90) days. The proposed schedule shall include the estimated cost for removal and disposal of all wastes, broken down into the costs for hazardous and nonhazardous wastes. Financial documentation must be submitted, as appropriate, to demonstrate Respondent's financial condition and support the rationale for the proposed removal.
- ii. Submission of a report, for the Commissioner's review and written approval, detailing Respondent's hazardous waste generator status. This report must include identification of all routinely-generated waste streams and their rate of generation (e.g., pounds per month), the results of a hazardous waste determination (including analytical data, as appropriate) for each waste stream, and the volume and frequency of disposal for all wastes. The report shall also include an assessment of Respondent's compliance with the regulations applicable to its hazardous waste generator status and, if necessary, a description of measures to be implemented to ensure compliance with the applicable regulations. Within five (5) days after the Commissioner

approves such report in writing, Respondent shall implement all measures necessary to ensure compliance with the applicable regulations and maintain them in full effect thereafter. Respondent shall implement all measures necessary to ensure compliance with applicable regulations and maintain those measures in full effect, and provide a schedule for the implementation of those measures.

- iii. Submission of a best management practices (“BMP”) plan, for the Commissioner’s review and written approval, addressing the handling, storage and, when necessary, disposal of chemicals at the facility. Such plan shall include but not be limited to inspection procedures and documentation, preparedness and prevention, emergency response procedures, personnel training and container management. The BMP plan must also describe how Respondent will evaluate chemicals to determine if they can still be used or must be disposed as waste. Such evaluation should assess such factors as visible condition of the container and its contents, shelf life of the chemical (if any), quantity of chemical on site, and whether or not the chemical is usable to Respondent or another party as an ingredient, product or effective substitute for a product. The frequency at which such evaluations will be performed must be specified.
 - iv. Submission of a plan, for the Commissioner’s review and written approval, which details the actions and/or operational changes to ensure future compliance with the Connecticut hazardous waste management regulations in RCSA sections 22a-449(c)-100 – 119 and the Connecticut recycling laws set forth in CGS section 22a-241b(c). The plan shall include a schedule for its implementation.
- d. Compliance with and modification of approved schedule.
- i. Respondent shall perform the activities set out in paragraphs B.1.c. i. through B.1.c. iv. above in accordance with the schedules approved by the Commissioner for those activities.
 - ii. Respondent shall remove from the site and promptly dispose of the wastes specified in paragraph B.1.c. i. 4. above in accordance with the plan and schedule approved by the Commissioner for those activities. Hazardous waste shall be removed in accordance with all applicable laws by a transporter holding a valid permit from DEP to transport hazardous waste.
 - iii. On or before **ten (10)** days after removal of the wastes specified in paragraph B.1.c. i. 4. above, Respondent shall submit to the Commissioner certification that such wastes have been removed as required, and documentation demonstrating such removal.

- iv. If Respondent is unable to comply with the requirements of any activity addressed in paragraphs B.1.c. i. through B.1.c. iii. above in accordance with a schedule approved by the Commissioner, due to Respondent's financial condition and/or its inability to meet the costs associated with such activity, Respondent may submit a written request to the Commissioner for modification of the schedule for that activity. Respondent may submit more than one request for the modification of the schedule for a particular activity.
 - v. The Commissioner may, but is not required to, approve Respondent's request for modification of any previously accepted schedule that is submitted pursuant to paragraph B.1.d. iv. above.
 - vi. Respondent shall comply with any schedule modification approved by the Commissioner.
2. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.
 3. Status of Notice of Violation no. 1090 and December 4, 2008 Notice of Noncompliance. This consent order supersedes both Notice of Violation no. 1090 and the December 4, 2008 Notice of Noncompliance, issued to Respondent.
 4. Civil penalty. Respondent agrees to the assessment of a civil penalty of **sixteen thousand, five hundred dollars (\$16,500.00)** as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.3.a. through A.3.d. of this consent order. The Commissioner and Respondent agree that **fifteen thousand, five hundred dollars (\$15,500.00)** shall be permanently discharged pending Respondent's full compliance with the terms and conditions of this consent order and documents incorporated herein and upon issuance of a "Certificate of Compliance" by the Commissioner. In the event that, in the sole judgment of the Commissioner, Respondent violates any provision of this consent order, Respondent shall pay to the Commissioner the penal sum of **fifteen thousand, five hundred dollars (\$15,500.00)** within **thirty (30)** days from the receipt of the Department's written notice thereof. Respondent agrees to pay the remaining civil penalty amount of **one thousand dollars (\$1,000.00)** in two separate, successive payments in the amount of **five hundred dollars (\$500.00)**, to be paid on or before **thirty (30)** and **ninety (90)** days from the date of issuance of this consent order.

If Respondent is unable to pay the aforesaid \$15,500.00 sum in full within thirty (30) days of its receipt of the aforesaid notice due to Respondent's financial condition, Respondent may submit a written request to the Commissioner for an extension of time to pay said additional penalty in full. The Commissioner may, but is not

required to, approve Respondent's request for extension of time to pay said additional penalty.

5. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty, consent order COWSWDH 11003 ." A copy of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.

6. Financial Disclosure. Beginning **one hundred and eighty (180)** days after issuance of this consent order, and continuing every one hundred and eighty days thereafter, until the requirements of paragraph B.1. of this consent order are completed, Respondent shall submit the following information to the Commissioner concerning Respondent's current financial condition:
 - a. a current list of Respondent's open bank accounts,
 - b. a list of all personal and real property in Respondent's name with an individual value of greater than **five thousand dollars (\$5,000.00)**,
 - c. a list of any assets with an individual value of greater than **five thousand dollars (\$5,000.00)** owned by Respondent that have been transferred to anyone on or after issuance of this consent order,
 - d. a list of any assets valued at greater than **five thousand dollars (\$5,000.00)** owned by Respondent that are secured by a lien made on or after issuance of this consent order,
 - e. a list of all current accounts receivable related to Respondent's business,
 - f. a list of all contracts for work that generate income of any kind for Respondent,
 - g. copies of all financial reports provided by Respondent to all other creditors and lien holders,
 - h. the name and address of every business in which Respondent has an interest of five per cent (5%) or more,
 - i. copies of Respondent's annual tax filing with the Internal Revenue Service and the State of Connecticut's Department of Revenue Services, and
 - j. Respondent's most recent income statement, balance sheet statement of assets and liabilities, and statement of shareholders' equity.

Respondent shall submit the information listed above until the requirements of paragraph B.1. of this consent order are completed, by delivering, every one hundred and eighty days from the date of issuance of this consent order, the financial disclosure reports to the individual named in paragraph B.21. of this consent order. The first financial disclosure report must be received within **one hundred and eighty (180)** days after issuance of this consent order.

The Commissioner will protect all documents that Respondent submits pursuant to this paragraph as “confidential business information”.

7. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within **thirty (30)** days of the Commissioner’s notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
8. Definitions. As used in this consent order, “Commissioner” means the Commissioner or a representative of the Commissioner.
9. Dates. The date of “issuance” of this consent order is the date the consent order is deposited in U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word “day” as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
10. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent’s chief executive officer or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent’s chief executive officer and each such individual shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made

in the submitted information may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.”

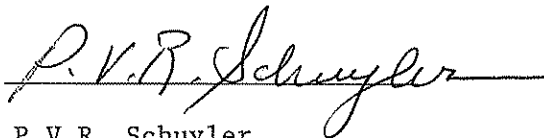
11. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
12. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.
13. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than **fifteen (15)** days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent’s obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
14. Commissioner’s powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner’s authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
15. Respondent’s obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
16. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance.
17. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.

18. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
19. Notice to Commissioner of changes. Within **fifteen (15)** days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
20. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
21. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Justin Williams, Sanitary Engineer
Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.


Ambion Corporation

BY: 
P.V.R. Schuyler
NAME (Typed)
President
TITLE (Typed)

DATE: January 20, 2011

Issued as a final order of the Commissioner of the Department of Environmental Protection.

2/2/11
Date


Amey W. Marrella
Commissioner

CONSENT ORDER no. COWSWDH11003