



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 03 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

David C. McCormack, Esq.
McCormack Law S.C.
3815 North Brookfield Road, Suite 200
Brookfield, Wisconsin 53045

Re: Consent Agreement and Final Order
Heresite Protective Coatings, Inc.
Docket No: **RCRA-05-2011-0013**

Dear Mr. McCormack:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on ~~AUG 03 2011~~ with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$197,137 in the manner prescribed in paragraph(s) 71 to 76 of the CAFO, and reference all checks with the number **BD 2751142R013** and docket number **RCRA-05-2011-0013**. Your payment is due within thirty (30) calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Mary S. Setnicar
Acting Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Steven Sisbach, WDNR (w/CAFO)
Barti Omaru, WDNR, WC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Heresite Protective Coatings, Inc.)
Manitowoc, Wisconsin)
)
Respondent.)
_____)

Docket No. RCRA-05-2011-0013
Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

RECEIVED

AUG 03 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Heresite Protective Coatings, Inc., a corporation doing business in the State of Wisconsin.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or legal conclusions in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 - 6992, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil pursuant to Sections 3001 – 3007, and 3013, and 3014 among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934, and 6935.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA,

42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by WAC NR 600.03(170), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the "owner" or "operator," as those terms are defined under WAC NR s. 660.10(87) and (88) and 40 C.F.R. § 260.10, of a facility located at 882 S. 14th Street, Manitowoc, WI 54220 (facility).

18. On July 15, 2010, U.S. EPA conducted an inspection of the facility.
19. The facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.
20. Respondent manufactures synthetic coatings.
21. Respondent's processes at the facility produce several hazardous wastes identified or listed in WAC NR Chapter 661 or cause a hazardous waste to become subject to regulation under WAC NR 660-670 [40 C.F.R. Parts 260-270].
22. Respondent is a "generator," as that term is defined in WAC NR 660.10(50) [40 C.F.R. § 260.10].
23. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2010, prior to the inspection, and was a large quantity generator.
24. At all times relevant to this CAFO, and specifically during the July 15, 2010 inspection, EPA observed that Respondent created, generated, or maintained hazardous wastes including phenol distillate, air dry waste, spent solvents, paint related waste, solvent still bottoms, phosphate sludge, caustic waste, lacquer-soaked spent rags, containers of used oil, and used fluorescent lamps at its facility. During the July 2010 inspection, EPA further observed that Respondent failed to produce evidence of inspection by a licensed professional engineer of its hazardous waste tank system for necessary proof of structural integrity, containment, and spill/overflow control. During the July 2010 inspection, EPA observed that Respondent failed to maintain daily, written records of tank system inspections. During the July 2010 inspection, EPA observed that Respondent failed to obtain necessary time extensions from WDNR for the storage of hazardous wastes for more than 90 days, failed to properly identify hazardous waste containers, failed to label containers accumulating hazardous waste with necessary accumulation

determine if the lacquer-soaked spent rags maintained at the facility were hazardous waste.

Respondent therefore violated WAC NR 662.11 [40 CFR § 262.11].

Count II: FAILURE TO LABEL USED OIL CONTAINERS

31. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

32. WAC NR 679.22(3)(a) requires generators of used oil to label used oil containers with the words "Used Oil" [40 C.F.R § 279(c)(1)].

33. During the July 2010 inspection, as described in paragraph 24, Respondent failed to label two 55-gallon drums accumulating used oil in the facility's basement with the words "Used Oil." Respondent, therefore, violated WAC NR 679.22(3)(a) [40 C.F.R. § 279(c)(1)].

Count III: FAILURE TO KEEP HAZARDOUS WASTE CONTAINERS CLOSED

34. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

35. WAC s. NR 665.0173(1) requires generators accumulating hazardous waste in containers to keep the containers closed when not adding or removing hazardous waste from the containers [40 C.F.R. § 265.173(a)].

36. During the July 2010 inspection, as described in paragraph 24, Respondent failed to keep an approximately 5-gallon satellite container accumulating hazardous waste phenol, and two 55-gallon containers accumulating hazardous air dry waste and solvent bottoms closed. No wastes were being added or removed from the containers. Respondent therefore violated WAC NR 665.0173(1) [40 C.F.R. § 265.173(a)].

**Count IV: FAILURE TO COMPLY WITH PERMIT EXEMPTION
CONDITIONS AND FAILURE TO OBTAIN HAZARDOUS
WASTE PERMIT FOR TREATMENT AND STORAGE OF
HAZARDOUS WASTE**

37. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

38. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

39. Pursuant to WAC NR 670.001(3) [40 C.F.R. § 270.1(c)] license and compliance with regulations of NR 665, subchapter P (WAC NR 665.0370 – .0383) [40 C.F.R. §§ 265.370 - .383] are required for thermal treatment of hazardous waste.

40. During the July 2010 inspection, as described in paragraph 24, Respondent thermally treated hazardous waste bottoms generated from the phenol coating tank in drying ovens without a hazardous waste permit and without complying with thermal treatment regulations in NR 665, subchapter P [40 C.F.R. 265 subpart P]. Respondent, therefore, treated hazardous waste without a permit and violated regulations in NR 665, subchapter P [40 C.F.R. 265 subpart P].

41. Pursuant to WAC NR 662.034(1) and (3) [40 C.F.R. § 262.34(a) and (c)], and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions of WAC NR 662.034(1) and (3) [40 C.F.R. § 262.34(a) and (c)].

42. If the conditions of WAC NR 662.034 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under WAC NR 670.001(3) and 670.010(1) and (4)

[40 C.F.R. §§ 270.1(c), 270.10(a) and (d)].

43. During the July 2010 inspection, as described in paragraph 24, Respondent stored hazardous waste phenolic distillate water in a tank more than 90-days without obtaining an extension of time from WDNR and without a hazardous waste storage license WAC NR 662.034(2) (40 C.F.R. § 262.34(b)).

44. During the July 2010 inspection, as described in paragraph 24, Respondent failed to label the hazardous storage tank with the words "Hazardous Waste" WAC NR 662.034(1)(c) [40 C.F.R. § 262.34(a)(3)].

45. During the July 2010 inspection, as described in paragraph 24, Respondent failed to label and date seven containers accumulating hazardous waste with the accumulation start dates WAC NR 662.034(1)(b)-(c) [40 C.F.R. § 262.34(a)(2)-(3)].

46. As set forth above, Respondent did not meet the conditions of WAC NR 662.034(1) and (3) [40 C.F.R. § 262.34(a) and (c)] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at WAC NR 670.001(3) and 670.010(1) and (4) [40 C.F.R. §§ 270.1(c), 270.10(a) and (d)].

Count V: FAILURE TO COMPLY WITH HAZARDOUS WASTE TANK REGULATIONS

47. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

48. WAC s. NR 665.0192(1) requires generators accumulating hazardous waste in tanks to obtain a tank assessment certified by an independent registered professional engineer attesting

the tank system's sufficient structural integrity and acceptability of storing hazardous waste.

49. During the July 2010 inspection, as described in paragraph 24, Respondent failed to obtain tank assessment certified by an independent registered professional engineer attesting the tank systems sufficient structural integrity and acceptability of storing hazardous waste.

Respondent, therefore, violated WAC NR 665.0192(1) [40 C.F.R. § 265.192(a)].

50. WAC s. NR 665.0193 requires generators accumulating hazardous waste in tanks to provide the tank system with sufficient secondary containment of sufficient size, lined with external liner, and equipped with leak detection system [40 C.F.R. § 265.193].

51. During the July 2010 inspection, as described in paragraph 24, Respondent failed to provide the tank system with sufficient secondary containment of sufficient size, lined with external liner, and equipped with leak detection system. Respondent, therefore, violated WAC NR 665.0193 [40 C.F.R. § 265.193].

52. WAC s. NR 665.0194(2)(a)-(b) requires generators accumulating hazardous waste in tanks to provide the tanks with spill and overfill controls [40 C.F.R. § 265.194(b)(1)-(2)].

53. During the July 2010 inspection, as described in paragraph 24, Respondent failed to provide the tank system with spill and overfill controls. Respondent, therefore, violated WAC NR 665.0194(2)(a)-(b) [40 C.F.R. § 265.194(b)(1)-(2)].

54. WAC s. NR 665.0195(3) requires generators accumulating hazardous waste in tanks to keep written records of the daily inspections of the tank system [40 C.F.R. § 265.195(g)].

55. During the July 2010 inspection, as described in paragraph 24, Respondent failed to keep written records of the daily inspections of the tank system. Respondent, therefore, violated WAC NR 665.0195(3) [40 C.F.R. § 265.195(g)].

56. WAC s. NR 665.1084 requires generators accumulating hazardous waste in tanks to

conduct average volatile organic (VO) concentration of the hazardous waste to determine proper emission controls [40 C.F.R § 265.1084].

57. During the July 2010 inspection, as described in paragraph 24, Respondent failed to conduct average volatile organic (VO) concentration of the hazardous waste stored in the tank system to determine proper emission controls. Respondent, therefore, violated WAC NR 665.1084 [40 C.F.R. § 265.1084].

Count VI: FAILURE TO DESCRIBE EMERGENCY ARRANGEMENTS IN THE FACILITY'S CONTINGENCY PLAN

58. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

59. WAC s. NR 665.0052(4) requires generators of hazardous waste to include a description of emergency arrangements agreed to with local emergency authorities in the facility's Contingency Plan [40 C.F.R. § 265.52(d)].

60. During the July 2010 inspection, as described in paragraph 24, Respondent failed to include a description of emergency arrangements agreed to with local emergency authorities in the facility's Contingency Plan. Respondent, therefore, violated WAC NR 665.0052(4) [40 C.F.R. § 265.52(d)].

Count VII: FAILURE TO PROVIDE ANNUAL REFRESHER TRAINING TO EMPLOYEES AND MAINTAIN APPROPRIATE RECORDS

61. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

62. WAC s. NR 665.0016(3) requires generators of hazardous waste to provide its employees with annual refresher training [40 C.F.R. § 265.16(c)].

63. During the July 2010 inspection, as described in paragraph 24, Respondent failed to provide proof of its employees' annual refresher training during the years of 2005-2008. Respondent, therefore, violated WAC NR 665.0016(3) [40 C.F.R. § 265.16(c)].

64. WAC s. NR 665.0016(4) requires generators of hazardous waste to maintain the following records for its employees: job title for each position, name of each employee filling each position, written job description, description of type and amount of both introductory and continuing training, and records of initial and annual training [40 C.F.R. § 265.16(d)].

65. During the July 2010 inspection, as described in paragraph 24, Respondent failed to maintain the following records for its employees: job title for each position, name of each employee filling each position, written job description, description of type and amount of both introductory and continuing training, and records of initial and annual training. Respondent, therefore, violated WAC NR NR 665.0016(4) [40 C.F.R. § 265.16(d)].

Count VIII: FAILURE TO COMPLY WITH UNIVERSAL WASTE REGULATIONS

66. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

67. WAC s. NR 667.14(4)(a) requires small quantity universal waste handlers to place used fluorescent lamps in containers that are structurally sound, adequate to prevent breakage, and compatible with the contents of lamps [40 C.F.R. § 273.14(d)(1)].

68. During the July 2010 inspection, as described in paragraph 24, Respondent failed to place used fluorescent lamps in containers that were structurally sound, adequate to prevent breakage, and compatible with the contents of lamps. Respondent therefore violated WAC NR

667.14(4)(a) [40 C.F.R. § 273.14(d)(1)].

69. WAC s. NR 667.14(5) requires small quantity universal waste handlers to label universal waste containers accumulating used lamps as: "Universal Waste-Lamps," "Waste Lamps," or "Used Lamps" [40 C.F.R. § 273.14(e)].

70. During the July 2010 inspection, as described in paragraph 24, Respondent failed to label its universal waste containers accumulating used lamps as: "Universal Waste-Lamps," "Waste Lamps," or "Used Lamps." Respondent, therefore, violated WAC NR NR 667.14(5) [40 C.F.R. § 273.14(e)].

Civil Penalty

71. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$197,137. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

72. Within 30 days after the effective date of this CAFO, Respondent must pay a \$197,137 civil penalty for the RCRA violations payable to the "Treasurer, United States of America," and send it by electronic funds transfer to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of: Heresite Protective Coatings, Inc.", the docket number of this CAFO, and the billing document

number.

73. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the electronic funds transfer and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Derrick Samaranski (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

74. This civil penalty is not deductible for federal tax purposes.

75. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

76. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

77. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

78. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

79. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

80. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

81. The terms of this CAFO bind Respondent, its successors, and assigns.

82. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

83. Each party agrees to bear its own costs and attorney's fees in this action.

84. This CAFO constitutes the entire agreement between the parties.

Heresite Protective Coatings, Inc., Respondent

7-11-11
Date


Mr. Thomas Fritzke,
President of Heresite Protective Coatings, Inc.

OFFICE OF SECRETARY
PROTECTION
ENVIRONMENT

United States Environmental Protection Agency, Complainant

7/29/11
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Heresite Protective Coatings, Inc.
Docket No. RCRA-05-2011-0013**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

August 1, 2011
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CASE NAME: Heresite Protective Coatings, Inc.
DOCKET NO: RCRA-05-2011-0013

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

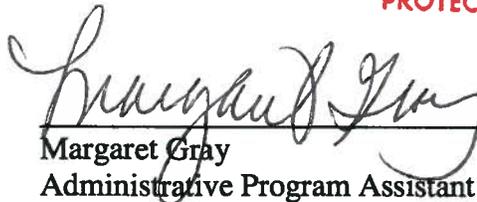
David C. McCormack, Esq.
McCormack Law S.C.
3815 North Brookfield Road, Suite 200
Brookfield, Wisconsin 53045

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Certified Mail Receipt #

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Dated: 8/3/11



Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590