



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

JUN 21 2018

REPLY TO THE ATTENTION OF:

VIA EMAIL

Mr. Dennis Palmiter
Chief Operating Officer
Sun Steel Treating
550 North Mill Street
South Lyon, Michigan 48178

Re: Consent Agreement and Final Order
Sun Steel Treating
Docket No: RCRA-05-2018-0014

Dear Mr. Palmiter:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed with the Regional Hearing Clerk on June 21, 2018.

Please pay the civil penalty in the amount of \$44,600 in the manner prescribed in paragraph 58 of the CAFO, and reference all checks with the docket number RCRA-05-2018-0014. The payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Mr. Jim McGuirk (jmcguirk@sunsteeltreating.com)
Alexandra Clark, MDEQ (clarka37@michigan.gov)
Lonnie Lee, MDEQ (leel@michigan.gov)
Jack Schinderle, MDEQ (schinderlej@michigan.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Sun Steel Treating
South Lyon, Michigan

U.S. EPA ID No.: MID005364732

Respondent.



Docket No. RCRA-05-2018-0014

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

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 Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Sun Steel Treating, a corporation doing business in the State of Michigan.
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 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 – 6992k, 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 and used oil pursuant to Sections 3001 – 3007, 3013, and 3014 among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, 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 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 Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 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 \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009 through November 2, 2015, and \$95,284 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 for which penalties are assessed on or after January 15, 2017, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by MAC R. 299.9106(i), 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 MAC R. 299.9106(f) and (g), and 40 C.F.R. § 260.10, of a facility located at 550 North Mill Street, South Lyon, Michigan (facility).

18. On August 29, 2017, 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 is a metal heat treating facility.

21. At all times relevant to this CAFO, Respondent created solid wastes including D005 and D007 hazardous waste.

22. Respondent's processes at the facility produce several hazardous wastes identified or listed in MAC R. 299.9201-9230; or cause a hazardous waste to become subject to regulation under MAC 299.9101-299.11107.

23. Respondent is a "generator," as that term is defined in MAC R. 299.9104(a) [40 C.F.R. § 260.10].

24. Respondent generated prior to the inspection, and continues to generate after the inspection, more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month, and was and is a large quantity generator.

25. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Michigan regulations as part of the applicable state hazardous waste management program for the state of Michigan, or both.

26. At all times relevant to this CAFO, the State of Michigan has not issued a license to Respondent to treat, store, or dispose of hazardous waste at the facility.

27. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

Count 1: Storage of Hazardous Waste without a License or Interim Status

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

29. Pursuant to 3005(a) or 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 license is prohibited.

30. Pursuant to MAC R. 299.9306, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without having a license or interim status, provided that the generator complies with all applicable conditions of MAC R. 299.9306.

31. If the conditions are not met, then the generator must apply for an operating permit under MAC R. 299.9502, 299.9508, 299.9510[40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

32. Under MAC R. 299.9306(1)(a), a generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without an operating license only if the waste is placed in containers, placed in tanks, or placed on drip pads, and the generator complies with the applicable requirements for each accumulation unit.

33. At the time of the inspection, several large pieces of broken furnace concrete castable were observed on the ground near Respondent's less-than-90-day hazardous waste roll-off box. Respondent manages waste furnace castable as D005 and D007 hazardous waste. By failing to place the pieces of hazardous waste concrete castable in a container, tank, or on a drip pad, Respondent failed to meet this license exemption requirement.

34. Additionally, under MAC R. 299.9306(1)(b), a generator that accumulates hazardous waste in drums or containers must clearly mark on each drum or container the date on which the period of accumulation began. The date must be visible for inspection on each drum or container.

35. At the time of the inspection, Respondent was accumulating D005 hazardous waste “barium quench oil” in two 55-gallon drums in the lower level of Building 1. The drums appeared to have been packaged and palletized for off-site shipment but remained on site. The drums did not appear to be labeled with an accumulation start date, and it was unclear if the packaging had obscured an existing accumulation start date. Because the drums remained on site, Respondent was required to ensure the accumulation start date was visible for inspection. Respondent, therefore, failed to meet this license exemption requirement.

36. Therefore, Respondent stored hazardous waste without a license or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at MAC R. 299.9502, 299.9508, 299.9510 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 2: Failure to Keep Hazardous Waste Containers Closed

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

38. Under MAC R. 299.9306(1)(a) [40 C.F.R. § 265.173(a)], a generator that accumulates hazardous waste in a container in a less-than-90-day accumulation area must ensure that each container is kept closed except when adding or removing waste.

39. At the time of the inspection, Respondent was accumulating hazardous waste in a less-than-90-day steel roll-off box. The roll-off box was positioned underneath the main floor of Building 1 and accumulated hazardous waste through a chute from the main floor above. The roll-off box was equipped with a tarp cover but the cover was not secured when waste was not being added or removed.

40. Respondent, therefore, failed to meet the requirements at MAC R. 299.9306(1)(a)

[40 C.F.R. § 265.173(a)].

Count 3: Failure to Close and Label Satellite Containers

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

42. Under MAC R. 299.9306(2) [40 C.F.R. § 265.173(a)], a generator that accumulates hazardous waste in a container at or near the point of generation of the waste (i.e., a “satellite container”) must ensure that each container is kept closed except when adding or removing waste. In the State of Michigan, it is also required that each container accumulating hazardous waste at or near the point of generation is marked with the hazardous waste number or chemical name of the waste, and the words “Hazardous Waste”.

43. At the time of the inspection, Respondent was accumulating hazardous waste grit and dust from a wheel blasting unit in a fiber pack drum in the northeast corner of Building 1. The fiber pack drum was labeled as “Hazardous Waste” but did not contain the hazardous waste number or chemical name of the waste. The drum was open during the inspection though no waste was being added. Respondent was also accumulating hazardous waste dust in two fiber pack drums from a baghouse connected to the same wheel blasting unit. The two fiber pack drums were labeled as “Hazardous Waste” but did not contain the hazardous waste number or chemical name of the waste.

44. Respondent, therefore, failed to meet the requirements at MAC R. 299.9306(2) [40 C.F.R. § 265.173(a)].

Count 4: Failure to Provide Annual Personnel Training

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

46. Under MAC R. 299.9306(1)(d) [40 C.F.R. § 265.16(c)-(e)], a large quantity generator of hazardous waste must provide applicable facility personnel an annual training review of hazardous waste management procedures and contingency plan implementation. The generator must maintain records that such training has been provided, and completed by, applicable facility personnel. Training records for current employees must be kept until closure of the facility and, for former employees, for at least three years from the date the employee last worked at the facility.

47. At the time of the inspection, Respondent's annual hazardous waste training consisted of reviewing the facility's Master Hazard Communication plan, which also contained Respondent's hazardous waste contingency plan. Respondent presented records that demonstrated employees had received such training in 2013 and 2016. Respondent's representatives could not demonstrate that annual training had occurred in 2014 and 2015, and no attendance records for these were available. Respondent failed to provide annual training to its personnel in 2014 and 2015 or, at least, failed to maintain records of such training.

48. Respondent, therefore, failed to meet the requirements at MAC R. 299.9306(1)(d) [40 C.F.R. § 265.16(c)-(e)].

Count 5: Failure to Minimize Releases

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

50. Under MAC R. 299.9306(1)(d) [40 C.F.R. § 265.31], facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health of the environment.

51. At the time of the inspection, Respondent was accumulating hazardous waste in a less-than-90-day steel roll-off box. The roll-off box was positioned underneath the main floor of Building 1 and accumulated hazardous waste through a chute from the main floor above. The roll-off box was accumulating a mixture of hazardous waste baghouse dust and grit, solidified quench salt, and wash water sludge. During the inspection, Respondent's employees were observed adding such waste to the roll-off box. During this process, hazardous waste liquid was observed splashing outside of the box and dust was visibly emanating from the box and settling outside of the area. Discolored water and mud was observed on the ground around the roll-off box. Respondent's procedure for adding hazardous waste to its roll-off box did not minimize the release of hazardous waste or constituents to the air or surrounding area.

52. Respondent, therefore, failed to meet the requirements at MAC R. 299.9306(1)(d) [40 C.F.R. § 265.31].

Count 6: Failure to Label Containers of Used Oil

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

54. Under MAC R. 299.9810(5) [40 C.F.R. §279.22(c)], a generator of used oil that stores used oil in containers must label or mark clearly each container of used oil with the words "Used Oil".

55. At the time of the inspection, Respondent accumulated used vacuum pump oil in small plastic containers adjacent to the plasma nitriding furnace vacuum pumps in Building 1. The containers were labeled as "Oil" but not "Used Oil." Respondent also accumulated used vacuum pump oil in similar plastic containers adjacent to the hardening furnaces in Building 2. The containers were not labeled as "Used Oil".

56. Respondent, therefore, failed to meet the requirement at MAC R. 299.9810(5) [40 C.F.R. §279.22(c)].

Civil Penalty

57. 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 \$44,600. 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.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$44,600 civil penalty for the RCRA violations by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

- a. For checks sent by regular U.S. Postal Service mail,

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

- b. For checks sent by express mail,

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state “*In the matter of: Sun Steel Treating*” and the docket number of this CAFO.

54. A transmittal letter stating Respondent’s name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and

transmittal letter to:

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

Brian Kennedy (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

56. 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.

57. 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

58. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the

Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: felitti.peter@epa.gov (for Complainant), and dpalmiter@sunsteeltreating.com or jmcguirk@sunsteeltreating.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

60. 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.

61. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or licenses.

62. 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).

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

64. 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.

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

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

Sun Steel Treating, Respondent

05-29-18
Date

Dennis L Palmiter
Mr. Dennis Palmiter
Chief Operating Officer
Sun Steel Treating

United States Environmental Protection Agency, Complainant

6-20-18
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

**In the Matter of:
Sun Steel Treating
Docket No. RCRA-05-2018-0014**

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.

June 20, 2018
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Sun Steel Treating, Inc.
Docket Number: RCRA-05-2018-0014

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on June 21, 2018, in the following manner to the addressees:

Copy by E-mail to
Respondent:

Dennis Palmiter
dpalmiter@sunsteeltreating.com

Copy by E-mail to
Attorney for Complainant:

Peter Felitti
felitti.peter@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 21, 2018

LaDawn Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5