



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JAN 25 2012

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL 7009 1680 0000 7665 1127
RETURN RECEIPT REQUESTED

Mr. Patrick J. Lang
Athens City Law Director
City of Athens
Law Administration Building, Suite 301
8 East Washington Street
Athens, Ohio 45701-2411

Re: Consent Agreement and Final Order
City of Athens Public Works Division, Athens, Ohio
OHD 987002 052
Docket No: RCRA-05-2012-0004

Dear Mr. Lang:

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 JAN 25 2012 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$122,553 in the manner prescribed in paragraphs 64 and 65 of the CAFO, and reference all checks with the number BD 2751242R003 and docket number RCRA-05-2012-0004. Your payment is due on within thirty calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

Gary Victorine, Chief
RCRA Branch
Land and Chemicals Division

Enclosures

cc: Andrew Kolesar, Thompson Hine, LLP (andrew.kolesar@thompsonhine.com) (w/CAFO)
Bruce McCoy, Ohio EPA (bruce.mccoy@epa.state.oh.us) (w/CAFO)
Isaac Wilder, Ohio EPA (isaac.wilder@epa.state.oh.us) (w/CAFO)

RECEIVED
JAN 25 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)	Docket No. RCRA-05-2012-0004
)	
CITY OF ATHENS)	Proceeding to Commence and Conclude
387 W. STATE STREET)	an Action to Assess a Civil Penalty
ATHENS, OHIO 45701)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID No.: OHD 987 002 052)	42 U.S.C. § 6928(a)
)	
Respondent.)	
_____)	

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 Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is the City of Athens, a municipality in the State of Ohio.

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. Respondent enters into this CAFO without admission of any legal allegations or conclusions in the CAFO except jurisdictional allegations.

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, to the best of its knowledge, it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the applicable regulations at 40 C.F.R. Parts 260 – 279 and authorized state regulations at Ohio Admin. Code §§ 3745-50 – 3745-69 at Respondent's facility located at 387 W. State Street, Athens, Ohio (the "Facility").

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, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

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 Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

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 \$27,500 per day for each violation of Subtitle C of RCRA that occurred after January 30, 1997 through March 15, 2004,

\$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and \$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 OAC 3745-50-10(88), 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 the RCRA authorized regulation at Ohio Admin. Code § 3745-50-10 (2004) and 40 C.F.R. § 260.10, of the Facility.

18. The Facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

19. Respondent’s processes at the Facility produced several hazardous wastes identified or listed in OAC 3745-51-01 to 3745-51-35 [40 C.F.R. Parts 260-270].

20. Respondent conducted “storage” of hazardous waste at the Facility as that term is defined under the RCRA authorized regulations at Ohio Admin. Code §§ 3745-50-10(48), 3745-51-03 and 3745-51-24 (2004), and 40 C.F.R. § 260.10.

21. Respondent’s conducted “disposal” of hazardous waste on the ground at the Facility, as that term is defined under the RCRA authorized regulations at Ohio Admin. Code §§ 3745-50-10(48), 3745-51-03 and 3745-51-24 (2004), and 40 C.F.R. § 260.10.

22. The ground where hazardous waste was disposed at the Facility is a landfill as that term is defined under the RCRA authorized regulation at Ohio Admin. Code § 3745-50-10 (2004).

23. The Facility is a hazardous waste facility as defined in the RCRA authorized regulation at Ohio Admin. Code § 3745-50-10(A)(39) (2004).

24. The Facility is a hazardous waste disposal facility as defined in the RCRA authorized regulation at Ohio Admin. Code § 3745-50-10(A)(28) (2004).

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

26. Respondent generated and managed hazardous waste at the Facility on or before November 19, 1980.

27. Respondent generated and managed hazardous waste at the Facility after November 19, 1980.

28. Ohio's RCRA authorized regulations at Ohio Admin. Code § 3745-50-10 (A)(2) (2004) define the "active life of a facility" to mean the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

29. Respondent submitted a certification of final closure for the Facility on February 4, 2011.

30. The Facility was in its active life within the meaning of the RCRA authorized regulation at Ohio Admin. Code § 3745-50-10(A)(2) (2004) until at least February 4, 2011.

31. Pursuant to RCRA Section 3008, U.S. EPA issued an Order Setting Amount of Civil Monetary Penalty and Compliance Schedule in the matter of the City of Athens, Ohio (Docket Number RCRA-V-W-14-93) on April 30, 2001 (the April 30, 2001 Order).

32. The Compliance Order section of the April 30, 2001 Order at A.3. required Respondent, among other things, to demonstrate to the Ohio Environmental Protection Agency

(Ohio EPA) (with a copy to U.S. EPA) financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage in accordance with the requirements specified in Ohio Admin. Code rules 3745-66-40 through 48 within 60 days of the effective date of the Order.

33. The April 30, 2001 Order went into effect 45 days after its service upon the parties pursuant to 40 C.F.R. § 22.27(d).

34. The April 30, 2001 Order was served on April 30 2001, and went into effect on June 14, 2001.

35. Based on financial reviews, Ohio EPA sent notices of violation (NOVs) to Respondent on February 19, 2002, April 5, 2002, September 11, 2003, November 26, 2003, September 29, 2004, January 27, 2006, and November 30, 2006, notifying Respondent that Ohio EPA believed Respondent was in violation of the of financial assurance regulations, specifically Ohio Admin. Code §§ 3745-66-42, 3745-66-43, and 3745-66-47, and Section A.3 of the Compliance Order in the April 30, 2001 Order.

36. Respondent attempted to use the financial test to meet the financial assurance and financial responsibility requirements for the Facility, because Respondent believed it possessed the necessary assets to meet that test.

37. Respondent made various submissions that contained components of the required submittal for the financial test and attempted to document Respondent's ability to fund closure, but did not submit a complete and adequate financial test demonstration until September 3, 2009.

38. Respondent did not submit any other financial mechanism to meet the financial assurance or financial responsibility requirements for the Facility.

39. On May 8, 2007, U.S. EPA conducted a review of the financial documentation on file for the Facility.

40. On September 28, 2007, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA based on the financial record review. The letter stated that U.S. EPA determined that the City of Athens was in violation of financial assurance, third party liability requirements and the April 30, 2001 Order.

41. On December 4, 2007, the City of Athens responded to the U.S. EPA September 28, 2007 Notice of Violation, indicating that the hazardous waste site was originally scheduled to close by the end of 2005; that, however, a monitoring well detected a chemical of concern above the closure limit, that a revised amended closure plan was pending which included further remediation of the soils, and that the current anticipated cost of cleanup was \$347,970, with a worst case scenario for cleanup of \$509,970. The response submitted financial test documents for 2007, but failed to completely and adequately submit all the required components to meet the financial test.

42. U.S. EPA sent Respondent pre-filing notice letters on July 23, 2008, June 11, 2010, and March 17, 2011, advising Respondent that it was prepared to bring a civil administrative proceeding for specific alleged violations of RCRA, and planned to seek a civil penalty. U.S. EPA asked Respondent to identify any information Respondent thought U.S. EPA should consider before issuing the complaint. In response to each of these notice letters, Respondent made various submissions and raised certain arguments concerning U.S. EPA's allegations. U.S. EPA also requested that if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, Respondent should submit specific financial documents.

43. Respondent submitted financial information on July 9, 2010, but EPA determined that it indicated an ability to pay a penalty amount exceeding this settlement amount.

44. Complainant and Respondent held discussions and exchanged correspondence regarding the alleged violations in good faith efforts to resolve this matter and Respondent has cooperated with Complainant during the settlement negotiations.

Count 1

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth in this paragraph.

46. As the owner or operator of a hazardous waste facility, Respondent is subject to the requirement of the RCRA authorized regulation at Ohio Admin. Code § 3745-66-43 (2004) [40 C.F.R. § 265.143].

47. The RCRA authorized regulation at Ohio Admin. Code § 3745-66-43 (2004) [40 C.F.R. § 265.143] requires the owner or operator of a facility to establish financial assurance for closure using certain financial assurance mechanisms.

48. Respondent was required to establish financial assurance for closure by at least August 13, 2001, and for every year thereafter until closure is certified as complete.

49. Respondent did not fully and adequately establish financial assurance for closure until September 3, 2009.

50. Respondent's failure to fully and adequately establish financial assurance until September 3, 2009 violated the RCRA authorized regulation at Ohio Admin. Code § 3745-66-43 (2004) [40 C.F.R. § 265.143].

Count 2

51. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth in this paragraph.

52. As an operator of hazardous waste facility, Respondent is subject to the requirement of the RCRA authorized regulation at Ohio Admin. Code § 3745-66-47 (2004) [40 C.F.R. § 265.47]

53. The RCRA authorized regulation at Ohio Admin. Code § 3745-66-47 (2004) [40 C.F.R. § 265.47] requires the owner or operator of a hazardous waste treatment, storage or disposal facility to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities as specified in that rule.

54. Respondent was required to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities by at least August 13, 2001.

55. Respondent did not fully and adequately demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities until September 3, 2009.

56. Respondent's failure to fully and adequately demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities until September 3, 2009, violated the RCRA authorized regulation at Ohio Admin. Code § 3745-66-47 (2004) [40 C.F.R. § 265.47].

Count 3

57. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth in this paragraph.

58. The compliance order in the April 30, 2001 Order required Respondent to demonstrate financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage within 60 days of the effective date of that Order.

59. Respondent was required by the April 30, 2001 Order to demonstrate financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage by August 13, 2001:

60. Respondent failed to fully and adequately demonstrate financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage as required by the April 30, 2001 Order until September 3, 2009.

61. Respondent's failure to fully and adequately demonstrate financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage until September 3, 2009 violated the compliance order in the April 30, 2001 Order.

62. Respondent's failure to fully and adequately demonstrate financial assurance for closure and post-closure activities and liability coverage for sudden and non-sudden accidental occurrences at the landfill outside the paint shop of the City Garage until September 3, 2009 violated an order issued by U.S. EPA under RCRA Section 3008, 42 U.S.C. § 6928.

Civil Penalty

63. 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 \$122,553. In determining the penalty amount, Complainant considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$122,553 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state *In Re: City of Athens*, the docket number of this CAFO and the billing document number.

65. 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 check and transmittal letter to:

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

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

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

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

67. 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.

68. 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

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

70. 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.

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

72. 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).

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

74. 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.

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

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

City of Athens, Respondent

12/22/11
Date

Paul Wiehl
Honorable Paul Wiehl
Mayor
City of Athens

United States Environmental Protection Agency, Complainant

1/12/12
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

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JAN 25 2012

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REGION 5

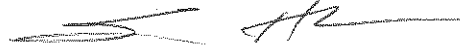
In the Matter of:
City of Athens
Docket No. RCRA-05-2012-0004

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.

1-23-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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JAN 25 2012

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USEPA
REGION 5

CASE NAME: City of Athens Public Works Division
DOCKET NO: RCRA-05-2012-0004

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 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Mr. Patrick Lang
Athens City Law Director
City of Athens
Law Administration Building
8 East Washington Street
Athens, Ohio 45701-2411

Certified Mail # 7009 1680 0000 7665 1127

Dated: Jan 25, 2012



Gaye Cuerington
Administrative Program Assistant
United States Environmental Protection Agency
Region 5
Land and Chemicals Division
RCRA Branch (LR-8J)
77 W. Jackson Blvd
Chicago, Illinois 60604-3590