



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
MAY 13 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL No.: 7009 1680 0000 7663 6896**  
**RETURN RECEIPT REQUESTED**

Mr. Eugene Schmittgens  
Evan & Dixon LLC  
Attorneys at Law  
Metropolitan Square  
211 North Broadway  
Suite 2500  
Saint Louis, Missouri 63102

Re: Swan Corporation  
EPA ID No.: ILR 000 024 018  
Consent Agreement and Final Order  
Docket No.: RCRA- RCRA-05-2014-0007 <sup>0008</sup> *fw*

Dear Mr. Schmittgens ,

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the referenced case. We filed the original with the Regional Hearing Clerk on May 13, 2014.

Please pay the civil penalty of \$37,500 in accordance with paragraph 44 of this CAFO, and reference your check with the Docket Number RCRA- RCRA-05-2014-0007

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,

*Karen L. Peacema*

Karen L. Peaceman  
Associate Regional Counsel  
Enclosures

cc: Todd Marvel, Illinois Environmental Protection Agency (todd.marvel@illinois.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No.: RCRA-05-2014-0008
	)	
THE SWAN CORPORATION	)	Proceeding to Commence and Conclude
CENTRALIA, ILLINOIS,	)	an Action to Assess a Civil Penalty
	)	Under Section 3008(a) of the Resource
U.S. EPA ID No.: ILD 052 622 917,	)	Conservation and Recovery Act,
	)	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, 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. 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 Illinois pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Swan Corporation, a Missouri corporation doing business in the State of Illinois.

5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 terms of this CAFO, including the assessment of the civil penalty specified below.

### **JURISDICTION AND WAIVER OF RIGHT TO HEARING**

8. Jurisdiction for this action is conferred upon U.S. EPA by sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

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

10. Upon the effective date of this CAFO, 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 with RCRA, 42 U.S.C. §§ 6901 – 6939e, the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized Illinois corollaries to the federal regulations.

### **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, among others, sections 3001 – 3007, 3013 and 3014 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), at 51 Fed. Reg. 3778 (January 31, 1986), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective on the date of publication. This program has been amended and reauthorized several times since.

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. 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 \$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 35 IAC § 720.110, 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an “owner” or “operator,” as those terms are defined at IAC § 720.110 [40 C.F.R. § 260.10], of a facility located at 200 Swan Avenue, Centralia, Illinois (facility).

18. The facility consists of land and structures, other appurtenances, and improvements on the land used for storing hazardous waste.

19. At all times relevant to this CAFO, Respondent manufactured compression molded fiberglass units such as shower and tub enclosures. Respondent used polyester and polystyrene resin fillers and fiberglass as raw materials in its operations.

20. At all times relevant to this CAFO, Respondent’s operations generated hazardous waste, a discarded material. For temporary periods, Respondent stored hazardous waste in containers or drums before the material was shipped from the facility for treatment, storage, or disposal elsewhere. Respondent is classified as a large quantity generator (LQG) of hazardous waste. Respondent’s facility is thus a “facility,” as that term is defined under 35 IAC § 720.110 (40 C.F.R. § 260.10).

21. Respondent characterized its hazardous waste as hazardous waste codes D001 (characteristic of ignitability), F005 (spent non halogenated solvents) and D035 (methyl ethyl ketone).

22. Respondent stored, transported, disposed of, or otherwise handled its D001, F005 and D035 waste in “containers” as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

23. At all times relevant to this CAFO, Respondent’s D001, F005 and D035 waste was a “solid waste” as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10] and 35 IAC § 721.102 [40 C.F.R. § 261.2].

24. At all times relevant to this CAFO, Respondent’s D001, F005 and D035 waste was a “hazardous waste” as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10] and 35 IAC § 721.103 [40 C.F.R. § 261.3].

25. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month relevant to this CAFO, and was a large quantity generator and a “generator,” as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

26. At no time relevant to this CAFO had the State of Illinois issued a permit to Respondent to treat, store, or dispose of hazardous waste at its facility.

27. At no time relevant to this CAFO did Respondent have interim status for the treatment, storage, or disposal of hazardous waste at its facility.

28. On or about February 20, 1990, U.S. EPA received Respondent’s Hazardous Waste Notification in which Respondent identified itself as a large-quantity generator.

29. On October 18, 2011, U.S. EPA conducted a compliance evaluation inspection at Respondent’s facility.

## COUNT 1

30. Complainant incorporates paragraphs 1-29 of this CAFO as though set forth in this paragraph.

31. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), 415 ILCS § 5/21(f) and authorized regulations promulgated thereunder, the treatment, storage or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

32. Pursuant to 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)], however, and subject to certain exceptions, a generator of hazardous waste in Illinois 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 set forth in 35 IAC § 722.134 [40 C.F.R. § 262.34(a)] including, but not limited to, requirements for owners and operators.

33. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC parts 724 and 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

34. Similarly, a generator who stores hazardous waste but fails to comply with any of the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34], is subject to the requirements of 35 IAC parts 724 and 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

35. For a generator of hazardous waste to be exempt from the requirement to have an operating permit or interim status, 35 IAC § 722.134 [40 C.F.R. § 262.34] requires that it must, among other things: 1) comply with the personnel training requirements of 35 IAC § 725.116



[40 C.F.R. § 265.116] and 2) prepare and maintain a contingency plan as delineated by 35 IAC part 725, subpart D [40 C.F.R. part 265, subpart D].

36. On October 18, 2011, Respondent had neither conducted personnel training for the year 2007 nor maintained records of the training as required by 35 IAC § 725.116 [40 C.F.R. § 265.116].

37. On October 18, 2011, Respondent had neither prepared nor maintained a contingency plan for the facility conforming to the requirements of 35 IAC part 725 subpart D [40 C.F.R. part 265, subpart D].

38. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

39. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility.

40. Respondent's storage of hazardous waste without a permit or interim status violated the requirements of 35 IAC §§ 703.121, 703.180, and 705.121 and section 3005 of RCRA, 42 U.S.C. § 6925(a), and authorizes assessment of a penalty under section 3008(a) of RCRA, 42 U.S.C. § 6728(a).

## **COUNT 2**

41. Complainant incorporates paragraphs 1-40 of this CAFO as though set forth in this paragraph.

42. Facilities that fail to meet the conditions for a generator permit exemption for waste storage under 35 IAC §§ 722.134, 329 IAC 3.1-7-1 [40 C.F.R. § 262.34] must meet the standards for treatment, storage, and disposal facilities in 35 IAC §§ 725 and 116 [40 C.F.R. Part 264,

Subparts B and C] which require that all owners and operators of hazardous waste comply with regulations for personnel training (35 IAC § 725.116) and for preparation of a contingency plan (35 IAC § 725.116).

43. Respondent failed to meet the requirements for personnel training and preparation and maintenance of a contingency plan as alleged above.

**CIVIL PENALTY**

44. 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 \$37,500. 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.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,500 civil penalty for the RCRA violations described herein 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 bear Respondent's name and the case docket number of this CAFO.

46. 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

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

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

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

48. 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. Respondent agrees that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

49. 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**

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

51. 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.

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

53. 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).

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

55. 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.

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

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

**Swan Corporation, Respondent**

3/31/2014  
Date

  
David A. King, COO/CFO

**United States Environmental Protection Agency, Complainant**

5/1/2014  
Date

  
Margaret M. Guerriero, Director  
Land and Chemicals Division

**In the Matter of:**  
**Swan Corporation**  
**Docket No. RCRA-05-2014-0008**

**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.

5-7-2014

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**Consent and Final Order  
In the Matter of: Swan Corporation**

**DOCKET NO: RCRA-05-2014-0008**

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this Consent Agreement and Final Order ((CAFO) docket number RCRA-05-2014-0008 the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows :

Mr. Eugene Schmittgens  
Evan & Dixon LLC  
Attorneys at Law  
Metropolitan Square  
211 North Broadway  
Suite 2500  
Saint Louis, Missouri 63102  
Certified Mail # 7009 1680 0000 7663 6896

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

On the 13th day of May, 2014

*Rub B. Aridge*  
Ruben B. Aridge  
Office Administrative Assistant  
United States Environmental Protection Agency  
Region V  
Land and Chemicals Division LM-8J  
77 W. Jackson Blvd, Chicago, IL 60604-3590

Certified Mail Receipt Number: 7009 1680 0000 7663 6896