



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**SEP 25 2014**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL 7009 1680 0000 7677 8268**  
**RETURN RECEIPT REQUESTED**

Mr. Paul C. Birkett  
President and Registered Agent  
History Wood Windows and Restoration Limited Liability Company  
300 West Henry Street  
Odell, Illinois 60460

Re: Consent Agreement and Final Order  
History Wood Windows and Restoration Limited Liability Company  
Docket No:

Dear Mr. Birkett:

Enclosed please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on September 25, 2014, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$1,000 in the manner prescribed in paragraph 69 of the CAFO, and reference all checks with the docket number RCRA-05-2014-0014. Your payment is due within 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,

rs/ Gary J. Victorine, Chief  
RCRA Branch

Enclosures

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

## NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** ) **Docket No: RCRA-05-2014-0014**  
 )  
**History Wood and Windows Restoration, LLC** ) **Proceeding to Commence and Conclude**  
**aka History Construction Management LLC** ) **an Action to Assess a Civil Penalty**  
**Odell, Illinois,** ) **Under Section 3008(a) of the Resource**  
 ) **Conservation and Recovery Act,**  
**Respondent.** ) **42 U.S.C. § 6928(a)**  
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**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 Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is History Wood Windows LLC, also known as History Construction Management LLC, a limited liability corporation doing business in the State of Illinois.
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, 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 Illinois 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. 3778 (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.

16. 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**

17. Respondent was and is a "person" as defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent conducted operations at 300 West Henry Street in Odell, Illinois (Henry facility).

19. Respondent conducted operations at 204 West Hamilton Street in Odell, Illinois (Hamilton facility).

20. Respondent's facilities consist of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

21. Respondent conducts wood paint and varnish stripping operations at its Henry and Hamilton facilities in order to recondition windows, sashes or other wood items.

22. Respondent is a "generator," as that term is defined in 35 IAC § 720.110 [40 C.F.R. § 260.10].

23. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, or the analogous Illinois regulations as part of the applicable state hazardous waste management program for the state of Illinois, or both.

24. Respondent applied for and received a hazardous waste identification number from the Illinois Environmental Protection Agency (IEPA) for the Henry facility: ILR000168179.

25. Respondent applied for and received a hazardous waste identification number from the IEPA for the Hamilton facility: ILR000168161.

26. Respondent indicated the generator status of the Henry and Hamilton facilities as conditionally exempt small quantity generator in all applications for hazardous waste identification numbers.

27. On September 1, 2011, the Illinois Department of Public Health relayed a citizen complaint to the IEPA in reference to Respondent's Henry and Hamilton facilities. The citizen complaint alleged that unlabeled drums of solvent were sitting outside and liquid was spilled on the ground causing odors at the Henry and Hamilton facilities. The complainant expressed a concern that the drums might contain hazardous material and the vapors may be toxic or volatile.

28. On September 1, 2011, IEPA conducted an inspection of the Henry and Hamilton facilities owned and operated by History Wood Windows LLC.

29. On September 12, 2011, IEPA conducted a sampling event at the Henry facility.

30. At the time of the September 1, 2011 inspection, Respondent was storing three drums of material at its Henry facility in a garage storage area.

31. The three drums referred to in paragraph 30 were marked with the words, "Bad old stripper."

32. At the time of the September 1, 2011 inspection, facility representative Paul Birkett described the material in the three drums referred to in paragraph 30 as the product "Back to Nature."

33. Respondent used "Back to Nature" products to remove paint in order to prepare items for restoration.

34. At the time of the September 1, 2011 inspection, facility representative Paul Birkett stated the company no longer planned to use the materials in the three drums referred to in paragraph 30.

35. The materials in the three drums referred to in paragraph 30 were solid wastes as that term is defined in 35 IAC § 721.102 [40 CFR § 261.2].

36. At the time of the IEPA September 12, 2011 sampling event, IEPA sampled the contents of the southern-most drum in the garage storage area referred to in paragraph 30 and identified the sample as X201.

37. The result of the toxicity characteristic leaching procedure (TCLP) test conducted on sample X201 indicated a concentration of lead at 22.3 milligrams per liter (mg/L).

38. A solid waste exhibits the characteristic of toxicity for lead in the TCLP concentration of lead is 5 mg/L or greater. A solid waste that exhibits the characteristic of toxicity for lead has the EPA Hazardous Waste Number D008 as defined in 35 IAC § 721.124

[40 CFR § 261.24].

39. The material in the southern-most drum in the garage storage area referred to in paragraph 30 was a hazardous waste with the EPA Hazardous Waste Number of D008.

40. The result of the TCLP test conducted on sample X201 showed the material contained approximately 30% of the solvent methylene chloride.

41. At the time of the September 1, 2011 inspection, Respondent was storing paint chips in a pile on the ground outside a garage at the Henry facility.

42. At the time of the September 1, 2011 inspection, Respondent was unable to provide a hazardous waste determination on the paint chips referred to in paragraph 41.

43. At the time of the September 1, 2011 inspection, Facility representative Paul Birkett stated the paint chips referred to in paragraph 41 were allowed to air dry.

44. At the time of the September 12, 2011 sampling event, the paint chip pile was no longer present at the facility.

45. At the time of the September 12, 2011 sampling event, IEPA took soil sample X101 in the area where the paint chip pile referred to in paragraph 41 was located during the IEPA September 1, 2011 inspection.

46. The result of the TCLP test conducted on soil sample X101 indicated a concentration of lead at 0.60 mg/L; and methylene chloride at 0.15 mg/kg.

47. At the time of the IEPA September 1, 2011 inspection, the IEPA inspector observed staining on the ground behind the garage at the Henry facility.

48. At the time of the IEPA September 12, 2011 sampling event, IEPA took soil sample X102 from the area referred to in paragraph 47.

49. The result of the TCLP test conducted on soil sample X102 indicated a concentration



of lead at 26.1 mg/L.

50. The result of the TCLP test conducted on soil sample X102 indicated a concentration of approximately 30% of the solvent methylene chloride.

51. At all times relevant to this CAFO, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

52. 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.

53. At all times relevant to this complaint, Respondent was not permitted, licensed, or registered by the State of Illinois to manage municipal solid waste; or permitted, licensed, or registered by the State of Illinois to manage non-municipal non-hazardous waste.

54. IEPA notified Respondent of violations at the Henry facility in a notice of violation dated December 7, 2011. Respondent failed to respond to IEPA's December 7, 2011 notice of violation for the Henry facility.

55. IEPA notified Respondent of violations at the Hamilton facility in a notice of violation dated December 7, 2011. Respondent failed to respond to IEPA's December 7, 2011 notice of violation for its Hamilton facility.

56. Respondent submitted separate closure plans to IEPA for the Hamilton and Henry facilities on January 13, 2014. IEPA approved both closure plans on April 8, 2014.

**Count 1: Failure to conduct hazardous waste determinations**

57. Complainant incorporates paragraphs 1 through 56 of this Complaint as though set forth in this paragraph.

58. A person who generates a solid waste must determine if that waste is a hazardous waste in accordance with 35 IAC § 722.111 [See 40 CFR § 262.11].

59. Respondent generated solid wastes from its operations at its facilities including, but not limited to, solvents, sludge, paint chips, dust, or unused product.

60. At the time of the IEPA September 1, 2011 inspection, Respondent was unable to provide hazardous waste determinations for all of its solid wastes generated at its two facilities.

61. Respondent failed to determine if its solid wastes were hazardous wastes; therefore, Respondent was in violation of 35 IAC § 722.111 [*See* 40 CFR § 262.11].

**Count 2: Failure to properly treat or dispose of hazardous waste**

62. Complainant incorporates paragraphs 1 through 56 of this Complaint as though set forth in this paragraph.

63. In accordance with 35 IAC § 721.105(g)(3) [40 CFR § 261.5(g)(3)], a conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is: permitted under part 270; in interim status; authorized to manage hazardous waste by a state hazardous waste management program; permitted, licensed, or registered by a state to manage municipal solid waste; or permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste.

64. Respondent treated by evaporation and stored hazardous waste paint chips in a pile at its Henry facility.

65. Respondent's treatment of hazardous waste at its Henry facility resulted in the release of lead and methylene chloride into the ground, and release of methylene chloride into the air.

66. Respondent's storage of hazardous waste at its Henry facility exceeded the conditionally exempt small quantity generator exemption quantity threshold.

67. Respondent's facilities were not: permitted under part 270; in interim status;

authorized by the State of Illinois to manage hazardous waste; permitted, licensed, or registered by the State of Illinois to manage municipal solid waste; or permitted, licensed, or registered by the State of Illinois to manage non-municipal non-hazardous waste. Therefore, Respondent was in violation of 35 IAC § 721.105(g)(3) [40 CFR 261.5(g)(3)].

**Civil Penalty**

68. 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 \$1,000. In determining the penalty amount, Complainant took into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and ability to pay. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

69. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 civil penalty 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 the case title: History Wood and Windows Restoration, LLC, and the docket number of this CAFO.

70. 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

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

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

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

72. 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.

73. 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.

#### **Closure**

74. Respondent must complete closure in accordance with the closure plans approved by IEPA on April 8, 2014, for both the Henry and Hamilton facilities. The closure plans state that Respondent must complete closure at both facilities by 180 days after the closure plans approval

date; therefore, Respondent must complete closure by October 5, 2014.

75. Failure to complete closure may subject Respondent to a civil action pursuant to Section 3008(c) of RCRA to collect penalties for any noncompliance with this CAFO.

#### **General Provisions**

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

77. 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.

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

79. 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).

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


81. 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.

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

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

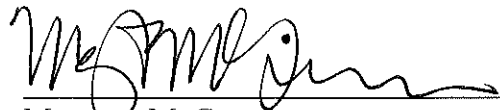
**History Wood and Windows Restoration, LLC, Respondent**

9/5/2014  
Date

  
Paul C. Birkett  
President  
History Wood and Window Restoration, LLC

**United States Environmental Protection Agency, Complainant**

9/19/2014  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**History Wood and Windows Restoration, LLC**  
**Docket No. RCRA-05-2014-0014**

**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.

9/22/2014  
Date

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

**Consent and Final Order**

**In the Matter of: History Wood Windows and Restoration Limited Liability Company**

**DOCKET NO: RCRA-05-2014-0014**

**CERTIFICATE OF SERVICE**

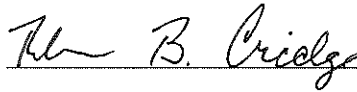
I hereby certify that today I filed the original of this Consent Agreement and Final Order ((CAFO) docket number RCRA-05-2014-0014 the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second 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. Paul C. Birkett  
President and Registered Agent  
History Wood Windows and Restoration Limited Liability Company  
300 West Henry Street  
Odell, Illinois 60460  
Certified Mail # 7009 1680 0000 7677 8268

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 24<sup>th</sup> Day of September, 2014



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 7677 8268