



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

REPLY TO THE ATTENTION OF:

APR 15 2008

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John F. Crosbie
Secretary/Treasurer
Crosbie Foundry Company, Inc.
1600 Mishawaka Street
Elkhart, IN 46514

Re: Consent Agreement and Final Order
Crosbie Foundry Company, Inc.
EPA ID No.: IND005101217

Dear Mr. Crosbie:

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 APR 15 2008, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$1,000 in the manner prescribed in paragraphs 46 and 47 of the CAFO, and reference all checks with the number BD 2750842R007 and docket number RCRA-05-2008-0005. Your payment is due within 20 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,

A handwritten signature in cursive script that reads "Willie H. Harris".

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosure

cc: Nancy Johnston, Indiana Department of Environmental Management (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
CROSBIE FOUNDRY COMPANY, INC.)
1600 Mishawaka Street)
Elkhart, Indiana 46514)
U.S. EPA ID #: IND005101217)
Respondent)

DOCKET NO. RCRA-05-2008-0005
[Handwritten signature]

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2008 APR 15 AM 11:59

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTION

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also simultaneously commenced and concluded under Sections 22.1(a)(4); 22.13(b); 22.14(a)(1)-(3) and (8); 22.18(b)(2) and (3); and 22.37 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), codified at 40 C.F.R. Part 22.

2. Jurisdiction for this action is conferred upon the United States Environmental Protection Agency ("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.

3. The Complainant is, by lawful delegation, the Director, Land and Chemicals

Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

4. 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.

5. 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 of 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.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), the Administrator of U.S. EPA granted the State of Indiana 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. 3953 (January 31, 1986). The Administrator of U.S. EPA granted Indiana final authorization to administer certain HSWA and additional RCRA requirements effective January 19, 1988, 53 Fed. Reg. 128 (January 5, 1988); September 11, 1989, 54 Fed. Reg. 29557 (July 13, 1989); September 23, 1991, 56 Fed. Reg. 33717 (July 23, 1991); September 23, 1991, 56 Fed. Reg. 33866 (July 24, 1991); September 27, 1991, 56 Fed. Reg. 35831 (July 29, 1991); September 30, 1991, 56 Fed. Reg. 36010 (July 30, 1991); October 21, 1996, 61 Fed. Reg. 43018 (August 20, 1996); and October 21, 1996, 61 Fed. Reg. 43009 (August 20, 1996). The U.S. EPA-authorized Indiana regulations are codified at Article 3.1 of Title 329 of the Indiana Administrative Code (IAC) (329 IAC 3.1 *et seq.*). See also 40 C.F.R. § 272.751 *et seq.*.

7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides U.S. EPA with the authority to enforce State regulations in States authorized to administer a hazardous waste program.

8. U.S. EPA has provided notice of commencement of this action to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. GENERAL ALLEGATIONS

9. The Respondent is Crosbie Foundry Company, Inc., which is and was at all times relevant to this Complaint a corporation incorporated under the laws of Indiana, and the owner and operator of a facility as defined by 40 C.F.R. § 260.10 (definition incorporated by reference at 329 IAC 3.1-4-1, Sec. 1(b)), located at 1600 Mishawaka Street, Elkhart, Indiana 46514 (the "facility").

10. Respondent is a "person" as defined by 329 IAC 3.1-4-20, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11. At all times relevant to this Complaint, Respondent generated at the facility solid waste, as defined in 40 C.F.R. § 261.2 (incorporated by reference at 329 IAC 3.1-6.1, Sec. 1(b)), in the form of spent or used foundry sand.

12. At all times relevant to this Complaint, Respondent accumulated spent foundry sand in containers, as defined in 40 C.F.R. § 261.2 (incorporated by reference at 329 IAC 3.1-6.1, Sec. 1(b)).

13. Periodically, Respondent treated the spent foundry sand that had accumulated by mixing it in a container with a lead fixative.

14. Prior to treatment, spent foundry sand generated at the facility was a hazardous waste, as defined in 40 C.F.R. §§ 261.20, 261.24 (incorporated by reference at 329 IAC 3.1-6.1, Sec 1(b)), because it exhibited the characteristic of toxicity with respect to lead.

15. At all times relevant to this Complaint, Respondent generated over 1000 kilograms of hazardous waste at the facility per month.

16. At all times relevant to this Complaint, Respondent accumulated hazardous waste on-site for up to 90 days.

17. At all times relevant to this Complaint, Respondent had neither a hazardous waste storage permit issued in accordance with Section 3005 of RCRA, 42 U.S.C. § 6925, nor interim status as set forth in 40 C.F.R. Part 265 (incorporated by reference at 329 IAC 3.1-10-1, Sec. 1).

18. On March 5, 2003, representatives of U.S. EPA and the Indiana Department of Environmental Management ("IDEM") conducted a Compliance Evaluation Inspection ("CEI") at the Crosbie facility.

19. On June 9, 2004, U.S. EPA conducted a Sampling Inspection ("SI") at the Crosbie facility.

COUNT 1: Failure to obtain a permit

20. Complainant incorporates paragraphs 1 through 19 of this Complaint as though set forth in this paragraph.

21. Under 40 CFR § 262.34(a)(4) (incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must comply with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265 (incorporated by reference at 329 IAC 3.1-10-1). These requirements include making arrangements with local authorities, 40 CFR § 265.37, and having a contingency plan, 40 CFR § 265.5.

22. At the time of the CEI (March 5, 2003), Respondent had not made arrangements with local authorities; nor did Respondent have a contingency plan.

23. Under 40 CFR § 262.34(a)(4) (incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must comply with the personnel training requirements set forth at 40 CFR § 265.16.

24. At the time of the CEI, Respondent did not have an employee training program that met the standards set forth at 40 CFR § 265.16 (incorporated by reference at 329 IAC 3.1-10-1).

25. Under 40 CFR § 262.34(a)(1)(i)(incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must place the waste in containers and the generator must comply with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR Part 265 (incorporated by reference at 329 IAC 3.1-10-1). These requirements include keeping containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste, 40 CFR § 265.173(a).

26. At the time of the CEI (March 5, 2003), Respondent failed to keep two containers of hazardous waste foundry sand closed except when Respondent added or removed waste. At the time of the CEI, Respondent failed to keep a container used for hazardous waste treatment closed except when Respondent added or removed waste. At the time of the SI (June 9, 2004), Respondent failed to keep three containers of hazardous waste foundry sand closed except when Respondent added or removed waste.

27. Under 40 CFR § 262.34(a)(3)(incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must clearly label or mark each container in which hazardous waste is placed with the words, "Hazardous Waste."

28. At the time of the CEI, Respondent failed to mark two containers of hazardous waste foundry sand with the words, "Hazardous Waste." At the time of the CEI, Respondent failed to mark the container used for treatment of hazardous waste with the words, "Hazardous Waste." At the time of the SI, Respondent failed to label three fiber drums of hazardous waste foundry sand with the words, "Hazardous Waste."

29. Under 40 CFR § 262.34(a)(2)(incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must clearly mark each container in which hazardous waste is placed with the date upon which each period of accumulation begins.

30. At the time of the CEI, Respondent failed to label two containers of hazardous waste foundry sand with the date on which accumulation began. At the time of the CEI, Respondent failed to label the container used for treatment of hazardous waste with the date on which accumulation began. At the time of the SI, Respondent failed to label three fiber drums of hazardous waste foundry sand with the date on which accumulation began.

31. Under 40 CFR § 262.34(a)(4)(incorporated by reference at 329 IAC 3.1-7-1), in order to accumulate hazardous wastes on-site for 90 days or less without a permit or without having interim status, a generator must comply with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265 (incorporated by reference at 329 IAC 3.1-10-1). These requirements include conducting inspections where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors, 40 CFR § 265.174.

32. At all times relevant to this complaint, Respondent did not conduct weekly inspections of the container storage area.

33. Because Respondent did not comply with the requirements set forth above,

Respondent was required to have a permit for the treatment and storage of hazardous waste at its facility. At all times relevant to this complaint, Respondent had neither a RCRA permit nor interim status. Respondent therefore violated 40 CFR 270.1 (incorporated by reference at 329 IAC 3.1-13-1) and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

III. TERMS OF SETTLEMENT

34. U.S. EPA and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and that the entry of this Consent Agreement and Final Order (CAFO) without engaging in litigation is the most appropriate means of resolving this matter.

35. Respondent admits the jurisdictional allegations of Section I of this CAFO.

36. Respondent neither admits nor denies the allegations of Section II of this CAFO.

37. Respondent consents to the issuance of this CAFO and the assessment of the civil penalty as outlined in Section IV of this CAFO.

38. Respondent waives any and all rights under any provisions of law to a hearing on the allegations contained in this CAFO. Respondent also waives any right to contest or appeal the factual allegations in Section II of this CAFO and any right to appeal the terms and conditions of this Consent Agreement or the Final Order that accompanies this Consent Agreement.

39. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for noncompliance with the CAFO.

40. Respondent has demonstrated, and hereby certifies, that it is now in compliance with

the requirements that formed the basis of the allegations in Section II of this CAFO.

41. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violation alleged in Section II of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

42. Nothing in this CAFO shall be construed to relieve the Respondent from its obligation to comply with all applicable federal, state and local statutes and regulations, including the Subtitle C requirements at 40 C.F.R. Parts 260 through 270.

43. Each party shall bear its own costs and attorneys fees in connections with the action resolved by this CAFO.

44. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

IV. CIVIL PENALTY

45. Complainant determined the proposed civil penalty in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider "the seriousness of the violation and any good faith efforts to comply with applicable requirements." Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 1990 RCRA Civil Penalty Policy. Based on an analysis of the above factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$1,000 to be paid as specified below. Respondent agrees not to claim or attempt to claim a Federal income tax deduction or credit covering all or any part of the cash civil penalty paid to the U.S. Treasury.

46. Within 20 days following the effective date of this CAFO, the Respondent shall pay a civil penalty in the amount of \$1,000. Payment shall be made by certified or cashier's check, payable to "Treasurer, the United States of America", and shall be sent to:

U.S. EPA, Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference the name of the Respondent and the Docket Number of this CAFO.

Interest and late charges shall be paid as specified below.

47. Upon payment of the civil penalty, Respondent shall send to each of the persons listed below a copy of the check and a transmittal letter referencing the name of Respondent and the docket number of this CAFO:

Regional Hearing Clerk
U.S. EPA, Region 5 (E-13J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Timothy Thurlow
U.S. EPA, Region 5
Office of Regional Counsel (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Robert Smith
U.S. EPA, Region 5
RCRA Branch (LR-8J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

48. Pursuant to 31 U.S.C. § 3717, Respondent shall pay the following amounts on any amount overdue under this CAFO:

(a) **Interest.** Any unpaid portion of a civil penalty shall bear interest at the rate

established by the Secretary of the Treasury pursuant to 31 U.S.C. § 2717(a)(1). Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

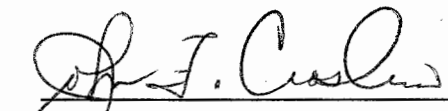
(b) **Monthly Handling Charge.** Respondent shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.

(c) **Non Payment Penalty.** On any portion of a civil penalty more than 90 calendar days past due, Respondent shall pay a non payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b) above.

V. SIGNATORIES

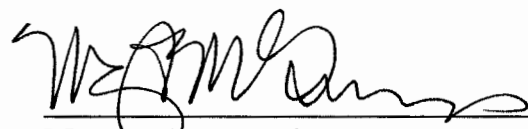
Each undersigned representative of a party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order and to bind legally such party to this document.

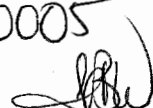
Agreed to this 27 day of FEBRUARY, 2008

By: 

John F. Crosbie
Secretary-Treasurer
Crosbie Foundry Company, Inc.
Respondent

Agreed to this 9th day of April, 2008

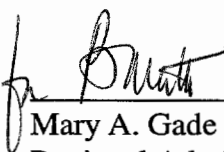
By: 


Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
Complainant RCRA-05-2008-0005


FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this FINAL ORDER. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

Ordered this 14th day of April, 2008

By: 
Mary A. Gade
Regional Administrator
U.S. EPA Region 5

RCRA-05-2008-0005


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CASE NAME: Crosbie Foundry Company, Inc.

DOCKET NO.: RCRA-05-2008-0005 *JW*

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 (E13-J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed documents to be mailed via Certified Mail, Return Receipt Request to the following:

John F. Crosbie
Registered Agent for
Crosbie Foundry Company, Inc.
1600 Mishawaka Street
Elkhart, Indiana 46514
Return Receipt # 7001 0320 0006 0184 9359

And via First Class Mail to:

Daniel Crosbie
President
Crosbie Foundry Company, Inc.
1600 Mishawaka Street
Elkhart, Indiana 46514

Nancy Johnston
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204

Dated: 4/15/2008

Katrina Jones

Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division – RCRA Branch
77 West Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5882

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