

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAY 11 2009

IN THE MATTER OF:)

RC2 Corporation)
111 West 22nd Street, Suite 320)
Oakbrook, Illinois 60523)

Respondent)

DOCKET NO
RCRA-05-2009-0010

ADMINISTRATIVE ORDER
on CONSENT

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

ADMINISTRATIVE ORDER on CONSENT

This ADMINISTRATIVE ORDER ON CONSENT (Order) is issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 3007 and 3013 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6927 and 6934. The authority vested in the Administrator has been delegated to the Director of the Land and Chemicals Division of Region 5, and the Director of the Air and Waste Management Division of Region 7.

I. JURISDICTION

- 1) This Order is issued to RC2 Corporation (Respondent), the owner and operator of facilities located at 101 Centerpoint Drive, Rochelle, Illinois 61068, and 2021 9th Street South East, Dyersville, Iowa 52040-2316 (the Facilities).
- 2) Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Order and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to:
 - A. Compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial;

- B. Require Respondent's full or interim compliance with the terms of this Order; and
- C. To impose sanctions for violations of this Order.

II. DEFINITIONS

- 1. Unless otherwise expressly provided herein, terms used in this Order are as defined in RCRA or in regulations promulgated under RCRA. Illinois regulations authorized under RCRA are specified below with reference to Respondent's Illinois facility.
 - A. "Facility" or "Facilities" shall include all property under the control of the Respondent.
 - B. "Solid Waste" shall mean solid waste as defined in Section 1004 of RCRA, 40 CFR § 260.10 (35 Illinois Administrative Code (IAC) 720.110 and 35 IAC 721.102) (the Federal RCRA regulations apply in Iowa).
 - C. "Hazardous Waste" shall mean hazardous waste as defined in Section 1004 of RCRA or 40 CFR 260.10 (35 IAC 720.110 and 35 IAC 721.103) (the Federal RCRA regulations apply in Iowa).

III. STATEMENT OF PURPOSE

- 1. In entering into this Order, the mutual objectives of EPA and Respondent are:
 - A. To ensure that all recalled toys at the Facilities are disposed of, and that waste determinations have been made, in compliance with the requirements of RCRA.

- B. To prevent the release of any hazardous constituent or hazardous waste from the recalled toys to the environment and the public.
- C. Respondent intends to dispose of the recalled toys in accordance with the requirements of RCRA to the extent applicable. Respondent does not intend to distribute the recalled toys in commerce.

IV. PARTIES BOUND

1. This Order shall apply to and be binding upon EPA, Respondent and its officers, directors, employees, agents, successors and assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors, acting on behalf of Respondent.
2. No change in ownership or corporate or partnership status relating to the Facilities will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Facilities, or a portion of a Facility, shall not affect Respondent's obligations under this Order. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, or contractors to perform any such tasks.
3. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of either of the Facilities, or any portion thereof, and shall notify EPA in writing within thirty (30) days prior to such transfer.

4. Respondent waives any rights to request a hearing on this matter, and consents to the issuance of this Order without a hearing.

V. FINDINGS OF FACT

1. Respondent is a company doing business in the State of Illinois and the State of Iowa, and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15), 40 CFR 260.10 (35 IAC 720.110).
2. Respondent is an owner and/or operator of Facilities located at 101 Centerpoint Drive, Rochelle, Illinois 61068, and 2021 9th Street South East, Dyersville, Iowa 52040-2316.
3. At the Facilities, Respondent stores approximately 1,100,000 toys which have been voluntarily recalled due to the presence or potential presence of lead in the painted toys.
4. At the time of the recall, lead in the painted toys was found to have concentrations ranging from about 0 parts per million (ppm) to approximately 12,000 ppm, using non-RCRA test methodology.
5. Failing to comply with the requirements of RCRA may pose a risk or threat to human health and/or the environment.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

1. Based on the Findings of Fact set forth above, the Director of the Land and Chemicals Division; Region 5; U.S. EPA and the Director of the Air and Waste

Management Division; Region 7; U.S. EPA have made the following conclusions of law and determinations:

- A. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15), 40 CFR 260.10 (35 IAC 720.110);
- B. Respondent is the owner or operator of a facility from which hazardous wastes may be generated and transported;
- C. Certain recalled toys stored at the Facilities may become solid waste, and potentially hazardous waste, pursuant to Sections 1004(5) and 3001 of RCRA; 42 U.S.C. §§6903(5) and 6921; 40 CFR part 261 (35 IAC 721).
- D. Improper release of hazardous wastes from the Facilities may present a substantial hazard to human health or the environment.
- E. Respondent intends to ensure that all solid and hazardous wastes related to the toys are disposed in accordance with RCRA, to the extent applicable.

VII. CONTACTS

1. EPA and Respondent each designate a primary contact on this matter as follows:

Duncan Campbell (LR-8J)
RCRA Branch
Land and Chemicals Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590
(312) 886-4555

Joseph Gheith
Product Integrity Manager
RC2 Corporation
1111 W 22nd Street, Suite 320
Oak Brook, IL 60523

(708) 573-7200

2. The parties may change their primary contacts, and agree to provide each other with written notice upon changing the primary contact.

VIII. WORK TO BE PERFORMED

1. Respondent agrees to and is hereby ordered to perform the acts specified in this section, in the manner specified herein.
 - A. Respondent shall perform a waste determination(s) in accordance with RCRA, on all recalled toys that it disposes or discards from the Facilities.
 - B. Respondent shall ensure that the waste determinations are made pursuant to 40 CFR § 262.11 (35 IAC 722.111).
 - C. In performing such waste determinations, Respondent shall use the Toxic Characteristic Leaching Procedure (TCLP) described in 40 CFR § 262.11(c), 261.24 (and as set forth in subpart C of 35 IAC 721). The appropriate sample size and sampling methodology will be determined pursuant to EPA Publication SW-846.
 - D. Respondent shall create and maintain documentation of such waste determinations, including sampling size, sampling methodology, and laboratory test results.
 - E. Respondent shall create and maintain documentation of all shipments of recalled toys that are being disposed or discarded, including any required

bills of lading, waste profiles, waste characterizations and hazardous waste manifests.

F. Respondent shall provide EPA with 14 days advance written notice prior to removing, distributing, removing, discarding or disposing of any recalled toys from the Facilities.

G. In addition to the above, if Respondent discovers that any of the recalled toys have otherwise been removed from the facility, Respondent shall promptly, and not later than 7 days after such discovery, provide EPA with notice of such removal.

H. The provisions of subparagraphs E, F and G above shall not apply to removal of recalled toys from the Facilities by Respondent for use in litigation. The parties expect that such use would not exceed de minimis numbers. If in any year Respondent intends to remove over 300 toys for litigation use, Respondent shall provide prior notice to EPA. If EPA believes that such removal raises any issues under RCRA or this Order, EPA shall contact Respondent to discuss appropriate procedures or safeguards.

2. Respondent shall provide EPA and its representatives access at all reasonable times to the Facilities and to any other property under control of Respondent to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all records, files, photographs,

documents, including all sampling data, that pertain to this Order and that are within the possession or under the control of Respondent or its contractors.

- A. Respondent may under 40 CFR Part 2 Subpart B, assert a business confidentiality claim covering all or part of the information in the manner described in 40 CFR 2.203(b). EPA will disclose the information covered by a business confidentiality claim only to extent and by means of the procedures at 40 CFR Part 2, B.

Respondent must make any request for confidentiality when submitting the information since any information not so identified may be made available to the public without further notice.

IX. RECORDS PRESERVATION

1. Respondent shall retain, during the pendency of this Order and for any additional time period specified as a condition of termination, all data, records, and documents now in its possession or control or which come into its possession or control which relate to the removal or disposal of the recalled toys from the Facilities.
2. All documents pertaining to this Order shall be stored by the Respondent in a centralized location at the Facilities to afford ease of access by EPA or its representatives.

X. RESERVATION OF RIGHTS

1. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to

comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. §6928, and/or to issue an administrative order.

2. This Order shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to RCRA or other available legal authorities should EPA determine that such actions are warranted and necessary to protect human health and the environment.
3. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable State, and Federal laws and regulations.
4. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facilities, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.
5. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal

of any hazardous constituents or hazardous wastes found at, taken to, or taken from the Facilities.

6. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA or any other applicable statutes or regulations.

XI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

1. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order.
2. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XII. MODIFICATIONS

This Order may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date, the date on which they are signed by EPA, and shall be incorporated into this Order.

XIII. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XIV. TERMINATION AND SATISFACTION

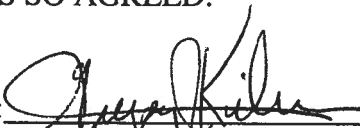
The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, the terms of this Order have been satisfactorily completed. If deemed appropriate by EPA certain requirements may survive termination of this Order and/or provide continuing obligations or requirements on the part of Respondent [e.g., Record Retention, EPA Reservation of Rights].

XV. EFFECTIVE DATE


The effective date of this Order shall be the date on which it is signed by EPA. Because the Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008 of RCRA, 42 U.S.C. §6928.

IN THE MATTER OF: RCRA-05-2009-0010
RC2 CORPORATION

IT IS SO AGREED:

BY:  27 April 2009
RC2 Corporation Date
By Gregory J. Kilrea
Chief Operating Officer

IT BEING SO AGREED, IT IS HEREBY ORDERED THIS 11th DAY OF May, 2009

BY: 
Margaret Guerriero
Director
Land and Chemicals Division
U.S. EPA, Region 5

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PROTECTION AGENCY

IN THE MATTER OF: RC2 CORPORATION RCRA-05-2009-0010
ADMINISTRATIVE ORDER

IT BEING SO AGREED, IT IS HEREBY ORDERED THIS 16 DAY OF April, 2009

BY: Becky Weber

Becky Weber

Director

Air and Waste Management Division

U.S. EPA, Region 7

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

**IN THE MATTER OF: RC2 CORPORATION RCRA-05-2009-0010
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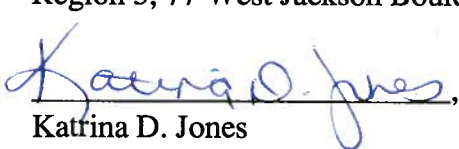
CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing ADMINISTRATIVE ORDER to be served upon the person designated below, on the date below, by causing said copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

Joseph Gheith
Product Integrity Manager
RC2 Corporation
1111 W 22nd Street, Suite 320
Oak Brook, IL 60523
(708) 573-7200

Phillip R. Scaletta
Ice Miller LLP
One American Square
Suite 2900
Indianapolis, IN 46282-0200

I have further caused the original ADMINISTRATIVE ORDER and this CERTIFICATE OF SERVICE to be filed in the Office of the Regional Hearing Clerk located in offices of U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, on the date below.

 May 11, 2009
Katrina D. Jones
RCRA Branch

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