



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

AUG 28 2008

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel P. Gillespie, President
Lighting Resources, LLC
805 East Francis Street
Ontario, California 91761

RE: Lighting Resources, LLC
U.S. EPA Identification Number: IN0 000 351 387
Consent Agreement and Final Order
Docket Number: RCRA-05-2008-0012 ²⁵

Dear Mr. Gillespie:

Enclosed please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the referenced case. We filed the originals with the Regional Hearing Clerk on _____.

Please pay the civil penalty of \$70,156 plus interest in accordance with paragraph number 61 of this CAFO and the Civil Penalty Schedule of Payment on page 15 of this CAFO. Reference your check with the number BD 2750869R005 ²⁵ and Docket Number: RCRA-05-2008-0012 ²⁵.

Thank you again for your cooperation in resolving this matter.

Sincerely,

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:)
)
LIGHTING RESOURCES, LLC)
Greenwood, Indiana)
Respondent)
Docket No. RCRA-05-2008-0012²⁰)
Proceeding to Assess a Civil Penalty)
Under Section 3008(a) of the Resource)
Conservation and Recovery Act,)
42 U.S.C. § 6928(a))

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 Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2)

4. Respondent is Lighting Resources, LLC, a California corporation doing business in the State of Indiana.

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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 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. 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. §§ 6901-6939e (2007), applicable regulations at 40 C.F.R. §§ 260.1-279.82 and Ind. Admin. Code tit. 329 rules 3.1-1-1 to 3.1-16-2, and its Hazardous Waste Management Permit.

Statutory and Regulatory Background

12. Subchapter III of RCRA and its implementing regulations require owners and operators of facilities that treat, store or dispose of hazardous waste identified or listed in 40 C.F.R. Part 261 to have a RCRA permit. As set forth at Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), “the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit.”

13. U.S. EPA has promulgated regulations under RCRA, 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.

14. 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.

15. 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 and certain additional RCRA requirements. The U.S. EPA-authorized Indiana regulations are codified at Ind. Admin. Code tit. 329 rules 3.1-1-1 to 3.1-16-2 (2001).

16. Under Section 3006(d) of RCRA, 42 U.S.C. § 6926(d), *Effect of State permit*, “[A]ny action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.”

17. 40 C.F.R. § 264.16(d) (2001) requires the owner or operator of a facility that treats, stores or disposes of hazardous waste to maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

18. 40 C.F.R. § 264.16(c) (2001) requires facility personnel to take part in an annual review of the initial training required under paragraph (a), which requires completion of a program of class-room instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of part 264.

19. 40 C.F.R. § 264.16(e) (2001) provides:

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

20. The RCRA authorized regulation at Ind. Admin. Code tit. 329 r. 3.1-9 incorporates the requirements of 40 C.F.R. § 264.16 (2001).

21. Section 3007 of RCRA, 42 U.S.C. § 6927, provides:

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to and to copy all records relating to such wastes...

Factual Allegations and Alleged Violations

22. The Respondent is a “person,” as defined by Ind. Admin. Code tit. 329 rule 3.1-4-1, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

23. At all times relevant to this CAFO, the Respondent was the owner and operator of a facility located at 498 Park 800 Drive, Greenwood, Indiana 46143 (“the Facility”).

24. At all times relevant to this CAFO, the Facility was a facility, as defined by Ind. Admin. Code tit. 329 rule 3.1-4-1 and 40 C.F.R. § 260.10, that treats, stores or disposes of hazardous waste.

25. The State of Indiana issued Respondent a five-year Final Hazardous Waste Management Permit for the Facility on August 31, 2005 (the Permit).

26. At Condition III.A.1., the Permit authorizes Respondent to store D009 Mercury, which is a hazardous waste under 40 C.F.R. § 261.24, in containers at the Facility, subject to the terms of the Permit.

27. Condition I.H.2. of the Permit requires Respondent to maintain at the facility, until closure is completed and certified by the owner/operator and an independent registered professional engineer, personnel training documents and records as required by Ind. Admin. Code tit. 329 rule 3.1-9, 40 C.F.R. § 264.16(d) and (e), and the Permit.

28. The Facility has not been closed.

29. Condition II.E. of the Permit provides:

The Permittee shall conduct personnel training as required by 329 IAC 3.1-9 and 40 CFR 264.16. This training program shall follow the attached outline in the Personnel Training Plan, Attachment H, which is incorporated herein by reference. The Permittee shall maintain training documents and records as required by 329 IAC 3.1-9 and 40 CFR 264.16(d) and (e).

30. On November 13, 2006, U.S. EPA conducted a compliance evaluation inspection (CEI) at the Facility.

31. During the November 13, 2006 CEI, Respondent allowed the U.S. EPA inspector to observe plant operations related to the handling of hazardous waste and universal waste, and review records at the facility.

32. During the November 13, 2006 CEI, the inspector asked to see annual training records for all those with hazardous waste job duties or responsibilities; specifically, the emergency coordinator and all those that had signed hazardous waste manifests and LDRs.

33. During the November 13, 2006 CEI, Respondent could not locate records of training for employees with hazardous waste job duties or responsibilities.

34. On March 2, 2007, U.S. EPA issued a Notice of Violation (the NOV) to Lighting Resources, that alleged, among other things, that Lighting Resources was not in compliance with Conditions I.H.2 and II.E. of the Permit, Ind. Admin. Code tit. 329 rule 3.1-9, and 40 C.F.R. § 264.16(d) and (e). The NOV requested that Lighting Resources respond to the allegations within 30 days of receipt of the NOV.

35. Respondent received the NOV on or about March 5, 2007.

36. On June 4 2007, U.S. EPA, through a duly designated officer, employee or representative, issued an Information Request (the Information Request) to Respondent, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

37. The Information Request requested information regarding Respondent's compliance with certain requirements of RCRA and its implementing regulations, the authorized State regulations and the Permit, including copies of records of both the initial and annual

training of all facility personnel, including the emergency coordinator and alternates, and all those who have signed hazardous waste manifests.

38. The Information Request required Respondent to submit information within fifteen days of receiving the Information Request.

39. The Information Request specified that failure to comply fully with the request for information may subject Lighting Resources to an enforcement action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

40. Respondent received the Information Request on June 6, 2007.

41. On February 4, 2008, U.S. EPA advised Respondent by letter that U.S. EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of RCRA and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, U.S. EPA asked Respondent to submit specific financial documents.

42. On February 7, 2008, Respondent telephoned U.S. EPA and stated that Lighting Resources would respond to the March 2, 2007 NOV and the June 4, 2007 Information Request.

43. On or about February 13, 2008, the Respondent responded to the NOV dated March 2, 2007, the Information Request dated June 4, 2007, and the February 4, 2008 letter.

44. On or about February 11, 2008, April 7, 2008 and May 9, 2008, Respondent submitted financial documents for review.

45. U.S. EPA and Respondent discussed the pre-filing letter, and settlement of this matter, and subsequently reached agreement on the settlement documented in this CAFO.

Count 1: Documentation or Records at Facility on Training and Job Experience

46. Complainant incorporates paragraphs 22 through 45 of this CAFO as though set forth in this paragraph.

47. At the time of the November 13, 2006 CEI, Respondent did not have documentation or records at the Facility documenting that the training or job experience required under 40 C.F.R. § 264.16(a)-(c) had been given to, and completed by, any facility personnel since August 31, 2005. Specifically, Lighting Resources could not document that emergency coordinator (Rob Ehrlich), his alternate (Daniel Willis), and other persons with hazardous waste responsibilities (Mr. Willis, Jason Wagner and Bettie Clyburn) had taken part in training required by 40 C.F.R. § 264.16.

48. At the time of the November 13, 2006 CEI, Respondent failed to comply with Ind. Admin. Code tit. 329 rule 3.1-9, 40 C.F.R. § 264.16(d) and (e), and Condition I.H.2. of the Permit.

49. At the time of the November 13, 2006 CEI, Respondent failed to comply with Ind. Admin. Code tit. 329 rule 3.1-9, 40 C.F.R. § 264.16, and Condition II.E. of the Permit.

50. Respondent's failure to maintain at the facility training documents and records as required by Ind. Admin. Code tit. 329 rule 3.1-9 and 40 C.F.R. § 264.16(d) and (e) constitutes a violation of Ind. Admin. Code tit. 329 rule 3.1-9, 40 C.F.R. § 264.16, and Conditions I.H.2. and II.E. of the Permit.

51. The Respondent's violation of Ind. Admin. Code tit. 329 rule 3.1-9, 40 C.F.R. § 264.16, and Conditions I.H.2. and II.E. of the Permit subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count II: RCRA 3007 Information Request

52. Complainant incorporates paragraphs 22 through 45 of this CAFO as though set forth in this paragraph.

53. On June 4, 2007, U.S. EPA requested information from Respondent pursuant to Section 3007 of RCRA.

54. The June 4, 2007 Information Request required a response within 15 days of June 6, 2007, the date Respondent received the Information Request.

55. On July 16, 2007, Diane Sharrow of U.S. EPA contacted Daniel Willis, Branch Manager of Lighting Resources, by telephone to confirm that Mr. Willis had received the June 4, 2007 Request. Mr. Willis stated that Lighting Resources had received the Information Request, but requested that another copy be sent via facsimile.

56. On July 16, 2007, U.S. EPA sent a confirmed copy of the June 4, 2007 request to Mr. Willis by facsimile.

57. Respondent did not provide a response to the information request until at least February 7, 2008.

58. Respondent failed to comply with the Information Request, as required by Section 3007 of RCRA, 42 U.S.C. § 6927.

59. The Respondent's violation of Section 3007 of RCRA, 42 U.S.C. § 6927, subjects the Respondent to an order for compliance and civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Civil Penalty

60. 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 \$70,156, and the parties have

agreed to a civil penalty in that amount, to be paid as specified below. 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, and Respondent's ability to pay.

61. Respondent agrees to pay the penalty of \$70,156 plus interest in four quarterly installments of \$17,539 plus interest, as set forth below, for a grand total of \$72,318.34. Respondent shall pay the first installment of \$18,403.94 within 90 days of the effective date of this CAFO, pay the second installment of \$18,187.70 within 180 days of the effective date of this CAFO, pay the third installment of \$17,971.47 within 270 days of the effective date of this CAFO, and pay the fourth installment of \$17,755.23 within 360 days of the effective date of this CAFO. Respondent shall make payments as provided in the attached schedule of payment.

62. Respondent must make payments by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note "In the Matter of: Lightning Resources, LLC", the docket number of this CAFO and the billing document number.

63. 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-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

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

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

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

65. 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.

66. If Respondent fails to comply with any provision of this CAFO, the full amount of civil penalty proposed in the CAFO, that being \$70,156, immediately shall become due and owing, to be paid by Respondent as provided in Paragraphs 62-65, minus any penalty amounts on the principal earlier paid by Respondent. (See 31 C.F.R. § 901.8)

General Provisions

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

68. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

70. This CAFO is a "final order" for purposes of the RCRA Civil Penalty Policy.

71. Respondent agrees to provide RCRA specific training on an annual basis; and keep written annual training records at the Facility for all employees with hazardous waste job duties or responsibilities, including the emergency coordinator, as required by 40 C.F.R. § 264.16.

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

73. 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.


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

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

In the Matter of:
Lightning Resources, LLC
Docket No. RCRA-05-2008-0012 23
Consent Agreement and Final Order

Lightning Resources, LLC, Respondent


August 01, 2008
Date



Dan Gillespie, President
Lightning Resources, LLC

United States Environmental Protection Agency, Complainant

August 13, 2008
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

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In the Matter of:
Lightning Resources, LLC
Docket No. RCRA-05-2008-0012²².

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.

8/21/08
Date

Lynn Buhl
Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

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In the Matter of: **Lightning Resources, LLC**
Docket No: *RCRA-05-208-001222*
Consent Agreement and Final Order
Attachment

LIGHTNING RESOURCES, LLC
CIVIL PENALTY SCHEDULE OF PAYMENT

Installment	Due By	Payment	Principal	Interest
1 st payment	File date + 90 days	\$18,403.94	\$17,539	\$864.94
2 nd payment	File date + 180 days	\$18,187.70	\$17,539	\$648.70
3 RD payment	File date + 270 days	\$17,971.47	\$17,539	\$432.47
4 th payment	File date + 360 days	\$17,755.23	\$17,539	\$216.23
	Totals:	\$72,318.34	\$70,156	\$2,162.34

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CASE NAME: Lighting Resources, LLC
DOCKET NO: RCRA-05-2008-0012 *2*.

CERTIFICATE OF SERVICE

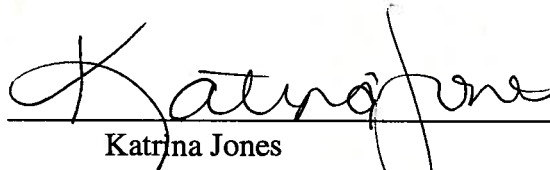
I hereby certify that today, I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

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

Daniel P. Gillespie
President
Lighting Resources, LLC
805 East Francis Street
Ontario, California 91761

Return Receipt # 7001 0320 0006 1448 9535

Dated: 8/28/08



Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard – LR-8J
Chicago, IL 60604-3590
(312) 353-5882

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