



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
April 27, 2021

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Ms. Jeryl L. Olson
Attorney
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
jolson@seyfarth.com

Re: Consent Agreement and Final Order
Facility Name: American Nickeloid Company
U.S. EPA Identification No.: ILD005072517
Docket No: **RCRA-05-2021-0025**

Dear Ms. Olson:

Attached please find a signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The CAFO was filed on April 27, 2021, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$22,455 in the manner prescribed in paragraphs 69 – 71 of the CAFO, and reference all checks with the docket number RCRA-05-2021-0025. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Graciela Scambiaterra, of my staff, at scambiaterra.graciela@epa.gov or 312-353-5103.

Sincerely,

MICHAEL
CUNNINGHAM

Digitally signed by MICHAEL
CUNNINGHAM
Date: 2021.04.12 16:22:13 -05'00'

Michael Cunningham, Chief
Compliance Section 1

Attachment

cc: Paul Eisenbrandt, Illinois EPA (paul.eisenbrandt@illinois.gov)
James Jennings, Illinois EPA (james.m.jennings@illinois.gov)
Luis Oviedo, U.S. EPA (oviedo.luis@epa.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2021-0025
)	
American Nickeloid Company)	Proceeding to Commence and Conclude
Peru, Illinois)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID No.: ILD005072517)	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, 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 Enforcement and Compliance Assurance 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 American Nickeloid Company, a 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 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.

Statutory and Regulatory Background

11. 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.

12. 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.

13. 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. The Administrator of U.S. EPA may assess a civil penalty of up to \$99,681 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

17. Respondent is an "owner" or "operator," as those terms are defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10, of a facility located at 2900 West Main Street, Peru, Illinois (the Facility or Peru Facility).

18. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, the use of which has included generating hazardous waste.

19. Respondent's Facility is a "facility," as that term is defined under and 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10.

20. At all times relevant to this CAFO, Respondent is an electroplating facility that uses

chromium and cyanide in their plating and coating processes.

21. At all times relevant to this CAFO, Respondent's acts or processes produced waste.

22. At all times relevant to this CAFO, certain of the waste generated by Respondent was a "solid waste" as that term is defined under Ill. Adm. Code § 721.102 and 40 C.F.R. § 261.2.

23. At all times relevant to this CAFO, Respondent determined that certain of its solid waste exhibited the hazardous characteristic of reactivity (U.S. EPA Hazardous Waste No. D003).

24. At all times relevant to this CAFO, Respondent's solid waste was a "hazardous waste" as that term is defined under Ill. Adm. Code § 721.103 and 40 C.F.R. § 261.3.

25. At all times relevant to this CAFO, Respondent was a "generator" as that term is defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10 because its solid waste was a hazardous waste.

26. At all times relevant to this CAFO, Respondent generated, during each calendar month, more than 1,000 kilograms of hazardous waste at the Facility. Therefore, Respondent is a large quantity generator.

27. Respondent generated and managed hazardous waste at its Facility after July 15, 1980.

28. On March 21, 2016, U.S. EPA conducted an initial Compliance Evaluation Inspection of the Facility (the March 2016 CEI).

29. On May 23, 2018, U.S. EPA issued an Information Request under Section 3007 of RCRA (Information Request) to Respondent.

30. On June 20, 2018, Respondent submitted to U.S. EPA a written response to the Information Request.

31. On July 5, 2019, U.S. EPA issued a Notice of Violation (NOV) to Respondent

alleging certain violations of RCRA discovered during the March 2016 CEI.

32. On August 20, 2019, Respondent submitted to U.S. EPA a written response to the NOV.

33. On April 30, 2020, U.S. EPA issued a Pre-Filing Notice and Opportunity to Confer (PFN) to Respondent alleging certain violations of RCRA that were discovered during the March 2016 CEI and follow-up correspondence.

34. On May 1, 2020, Respondent submitted to EPA a verbal response to the PFN.

35. 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 its Facility.

36. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

37. Respondent's initial Hazardous Waste Notification was submitted on or near July 15, 1980.

38. In its Hazardous Waste Notifications referenced above, Respondent identified itself as a large quantity generator of hazardous waste.

Count 1 – Failure to Meet Conditions for an Exemption for Large Quantity Generator that Accumulates Hazardous Waste

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in full in this paragraph.

40. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

41. Pursuant to 35 Ill. Adm. Code §722.134, however, and subject to certain exceptions, a

generator of hazardous waste 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 Ill. Adm. Code § 722.134 including, but not limited to, requirements for owners and operators in 35 Ill. Adm. Code part 724.

42. Similarly, the failure to comply with 35 Ill. Adm. Code 722.134 subjects the generator of hazardous waste to the requirements of Part 264 and the permit requirements of 35 Ill. Adm. Code §§ 703.121, 703.180 and 105.121.

43. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, a generator must clearly mark each container holding hazardous waste with the words “Hazardous Waste” and the accumulation start date.

44. At the time of the inspection, Respondent failed to label approximately three containers of hazardous waste with the words “Hazardous Waste”.

45. At the time of the inspection, Respondent failed to mark approximately six containers of hazardous waste with an accumulation start date.

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

47. As a result of Respondent’s failure to meet certain applicable conditions for the generator exemption provided by 35 Ill. Adm. Code § 722.134, Respondent became an operator of a hazardous waste treatment, storage and disposal facility (TSDF).

48. Respondent’s storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925 (a) and the requirements of 35 Ill. Adm. Code §§ 703.121, 703.180(iii) and 705.121 and 270.10(a) and (d), and 270.13.

Count II - Failure to Conduct Training

49. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in full in this paragraph.

50. Pursuant to 35 Ill. Adm. Code § 725.116(d) and 40 C.F.R. § 265.16(d), a large quantity generator of hazardous waste must maintain records that document that facility personnel have successfully completed a training program within six months after the date of their employment or assignment to a facility, or to a new position at a facility, and must take part in an annual review of this training thereafter.

51. At the time of the inspection, Respondent did not conduct annual training for certain facility employees between February 2016 and September 2017.

52. At the time of the inspection, Respondent did not conduct initial training for one facility employee within six months of that employee's being assigned to a position of hazardous waste management.

53. Respondent's failure to conduct initial and annual training and maintain training records violated 35 Ill. Adm. Code § 725.116(d) and 40 CFR § 265.16(d).

Count III - Failure to Have a Contingency Plan with All the Required Information

54. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in full in this paragraph.

55. Pursuant to 35 Ill. Adm. Code § 725.152(d) and 40 C.F.R. § 262.261(d) in order to be exempt from permitting and interim status requirements, a large quantity generator of hazardous waste must have a contingency plan that lists the names, addresses and phone numbers of all persons qualified to act as emergency coordinators and this list must be kept up to date.

56. At the time of the inspection, Respondent did not have a contingency plan that listed all of the emergency coordinator information.

57. Pursuant to 35 Ill. Adm. Code § 722.361(e) and 40 C.F.R. § 262.261(e) a large quantity generator of hazardous waste must have a contingency plan that includes a list of all the emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communication and alarm systems, and decontamination equipment) where this equipment is required. The list must be kept up to date and the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.

58. At the time of the inspection, Respondent did not have a contingency plan that included a list of all the emergency equipment at the facility, their location or a brief outline of their capabilities.

59. Respondent's failure to have the emergency coordinator information in the contingency plan violated 35 Ill. Adm. Code §722.361(d) and 40 C.F.R. § 262.261(d).

60. Respondent's failure to have a list of all the emergency equipment in the contingency plan violated 35 Ill. Adm. Code § 725.152(e) and 40 C.F.R. §262.261(e).

Count IV - Failure to Submit Annual Hazardous Waste Reports with All the Required Information

61. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in full in this paragraph.

62. Pursuant to 35 Ill. Adm. Code 722.141, a generator of more than 1,000 kilograms of hazardous waste per month must prepare and submit an annual report to the Illinois Environmental Protection Agency (Illinois EPA) that covers generator activities, including a description and EPA

hazardous waste number(s) for each hazardous waste shipped offsite, for the previous year. An annual report is due by March 1 of each numbered year.

63. At the time of the inspection, Respondent had submitted an annual report to Illinois EPA without the EPA hazardous waste number P106 for one of its wastestreams.

64. Respondent's failure to prepare and submit an annual report for the Peru Facility with all the required information for one of the wastestreams violated of 35 Ill. Adm. Code 722.141.

Count IV - Failure to Have Waste Determinations Records

65. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in full in this paragraph.

66. Pursuant to 35 Ill. Adm. Code 722.140(c) and 40 C.F.R. § 262.40(c) a generator must keep records of any test results, waste analyses or other determinations made in accordance with 35 Ill. Adm. Code 722.111(f) and 40 C.F.R. § 262.11 for at least three years from the date that the waste was last sent to an onsite or offsite treatment, storage, or disposal facility.

67. At the time of the inspection, Respondent did not have records of waste determinations for two solid waste streams generated at the Peru Facility.

68. Respondent's failure to keep waste determination records for two solid wastes at the Peru Facility violated 35 Ill. Adm. Code 722.140(c) and 40 C.F.R. § 262.40(c).

Civil Penalty

69. 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 \$22,455. In determining the penalty amount, Complainant took into account the seriousness of the violations 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.

70. Within thirty (30) days after the effective date of this CAFO, Respondent shall pay a \$22,455 civil penalty for the RCRA violations alleged herein:

For checks sent by regular U.S. Postal Service mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state Respondent's name and the docket number of this CAFO.

For checks sent by express mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CAFO.

For electronic funds transfer, sending funds electronically, payable to "Treasurer, United States of America," and to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

71. After paying the civil penalty, Respondent agrees to send evidence of that payment, and a cover letter stating Respondent's name, the case title: "In the Matter of: American Nickeloid Company, Peru, IL," and the case docket number, to:

Regional Hearing Clerk (ECA-18J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Or via email at whitehead.ladawn@epa.gov

Land Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 5
R5lecab@epa.gov

Graciela Scambiaterra
Environmental Scientist
RCRA Branch (ECR-17J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Luis Oviedo
Office of Regional Counsel (C-17J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

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

73. 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.

74. 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 fifteen-dollar (\$15) handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondent must pay a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

General Provisions

75. The Parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: oviedo.luis@epa.gov (for Complainant), and jolson@seyfarth.com (for Respondent).

76. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this 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, 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 attorneys' fees in this action.

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

In the Matter of: American Nickeloid Company, Peru, Illinois

Docket No. RCRA-05-2021-0025

American Nickeloid Company, Respondent

4/7/2021

Date



Mr. Brian Cannon
Plant Manager
American Nickeloid Company
Peru, Illinois

In the Matter of: American Nickeloid Company, Peru, Illinois

Docket No. RCRA-05-2021-0025

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2021.04.22
12:01:06 -05'00'

Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency
Region 5

In the Matter of: American Nickeloid Company, Peru, Illinois

Docket No. RCRA-05-2021-0025

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, United States Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.04.23
14:56:08 -05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: **American Nickeloid Company**

Docket Number: RCRA-05-2021-0025

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on April 27, 2021, this day in the following manner to the addressees:

Copy by email to Respondent's Representative:	Jeryl Olson Partner Seyfarth Shaw LLP jolson@seyfarth.com
Copy to email to Enforcement Officer:	Graciela Scambiatterra scambiatterra.graciela@epa.gov
Copy by email to Attorney for Complainant:	Luis Oviedo oviedo.luis@epa.gov
Copy by email to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 5