



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

DEC 30 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7009 1680 0000 7663 7053

Mr. Kevin Grant
President
Electro-Max, Inc.
105 North Rowell Road
Hampshire, Illinois 60140

Re: Consent Agreement and Final Order **RCRA-05-2014-0005**
Electro-Max, Inc.

Dear Mr. Grant:

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 December 30, 2013, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$28,242 in the manner prescribed in paragraph(s) 61 through 63 of the CAFO, and reference all checks with the docket number **RCRA-05-2014-0005**. Your first installment 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,

Gary J. Victorine,
Chief
RCRA Branch

Enclosures

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

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 or used oil, pursuant to Sections 3001 – 3007, 3013, and 3014, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934, and 6935.

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). The U.S. EPA-authorized Illinois RCRA regulations are codified at 35 Illinois Administrative Code (IAC) Part 703 *et seq.* See also 40 C.F.R. § 272.700 *et seq.*

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 \$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

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

17. Respondent is the “owner” or “operator,” as those terms are defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 105 North Rowell Road in Hampshire, Illinois.

18. The facility consists of land and structures, other appurtenances, and improvements on the land used for storing hazardous waste.

19. Respondent conducts metal finishing operations at its facility including, electropolishing, passivation and vapor degreasing.

20. At all times relevant to this CAFO, Respondent created solid wastes including, “pickle tank sludge,” “electropolishing sludge,” “alkaline cleaners sludge,” and “waste water treatment sludge.”

21. Respondent’s manufacturing processes at the facility produce several hazardous wastes identified or listed in 35 IAC §§ 721.120 - 721.133 [40 C.F.R. § 261.20 – 261.33].

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

23. At all times relative to this CAFO, Respondent’s operations produced more than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month, and therefore, Respondent was a large quantity generator of hazardous waste.

24. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Illinois regulations as part of the applicable state hazardous waste management program for the State of Illinois, or both.

25. 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.

26. 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.

27. August 2, 2011, the Illinois Environmental Protection Agency (IEPA) conducted an inspection of the facility.

28. On September 27, 2011, the IEPA referred Respondent to the U.S. EPA for administrative enforcement based on the findings of its inspection.

29. On January 3, 2012, U.S. EPA issued a Notice of Violation to Respondent.

30. Respondent submitted a written response to the Notice of Violation on January 23, 2012.

Count 1

Storage of Hazardous Waste without a Permit

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

32. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), 35 IAC § 703.121(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.

33. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], 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 of 35 IAC § 722.134 [40 C.F.R. § 262.34].

34. 35 IAC § 722.134(a)(2) [40 CFR § 262.34(a)(2)] requires a generator using containers to store hazardous waste to clearly mark the containers and make visible for inspection the date upon which each period of accumulation begins.

35. At the time of the inspection, one 55-gallon container of pickle tank sludge, thirty

(30) 55-gallon containers of electropolishing sludge, four 55-gallon containers of alkaline cleaner sludge, and seventeen (17) cubic yard bags of waste water treatment sludge were either not marked with accumulation dates, or were stored in a manner in which the accumulation dates were not visible for inspection.

36. Therefore, Respondent failed to comply with the generator permit exemption condition of 35 IAC § 722.134(a)(2) [40 CFR § 262.34(a)(2)].

37. 35 IAC § 722.134(a)(3) [40 CFR § 262.34(a)(3)] requires a generator storing hazardous waste in containers to label or mark clearly each container of hazardous waste with the words "Hazardous Waste."

38. At the time of the inspection, twenty-three (23) 55-gallon containers of electropolishing sludge, four 55-gallon containers of alkaline cleaner sludge, and seventeen (17) cubic yard bags of waste water treatment sludge were not labeled or marked clearly with the words "Hazardous Waste."

39. Therefore, Respondent failed to comply with the generator permit exemption condition of 35 IAC § 722.134(a)(3) [40 CFR § 262.34(a)(3)].

40. A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in 35 IAC § 721.131 or 721.133(e) in a calendar month, that accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility. Such a generator is subject to the requirements of 35 IAC Parts 724, 725, and 727 and the permit requirements of 35 IAC Parts 702, 703, and 705, unless the generator has been granted an extension of the 90-day period. 35 IAC § 722.134(b) [40 C.F.R. § 262.34(b)].

41. At the time of the inspection, Respondent had accumulated at least one container of

pickle tank sludge, one container of electropolishing sludge, and one container of alkaline cleaner sludge for greater than 90 days.

42. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34], necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste. Therefore, Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and 35 IAC § 703.121(a)(1) [40 C.F.R. § 270.1(c)].

Count 2

Failure to Maintain Aisle Space

43. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

44. Facilities that fail to meet the conditions for a generator permit exemption for waste storage under 35 IAC § 722.134 [40 C.F.R. § 262.34] must meet the standards for treatment, storage, and disposal facilities at 35 IAC Part 724 [40 C.F.R. Part 264]. 35 IAC §§ 724.101(b) and (g)(3) [40 C.F.R. §§ 264.1(b) and (g)(3)].

45. 35 IAC § 724.135 [40 C.F.R. § 264.35] requires owners or operators to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operations in an emergency, unless the owner or operator demonstrates to the Agency that aisle space is not needed for any of these purposes.

46. At the time of the inspection, Respondent's hazardous waste container storage area had container arrangements such that a row of containers on pallets, with multiple containers per pallet, was lined against a wall with a second row of containers on pallets immediately in front of

it.

47. As a result, one of these rows was obstructed from access on both sides, and the other was obstructed on one side.

48. Therefore, Respondent violated 35 IAC § 724.135 [40 C.F.R. § 264.35].

Count 3

Failure to Conduct Container Inspections

49. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

50. Facilities that fail to meet the conditions for a generator permit exemption for waste storage under 35 IAC § 722.134 [40 C.F.R. § 262.34] must meet the standards for treatment, storage, and disposal facilities at 35 IAC Part 724 [40 C.F.R. Part 264]. 35 IAC §§ 724.101(b) and (g)(3) [40 C.F.R. §§ 264.1(b) and (g)(3)].

51. 35 IAC § 724.274 [40 C.F.R. § 264.174] requires the owner or operator to inspect areas where containers of hazardous waste are stored, as least weekly. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

52. On the day of the inspection, containers in the hazardous waste storage area were staged such that a row of containers on pallets, with multiple containers per pallet, was lined against a wall with a second row of containers on pallets immediately in front of it.

53. As a result, one of these rows was obstructed from access on both sides, and the other was obstructed on one side.

54. Therefore, Respondent's weekly inspections, during the time the containers were arranged in this manner, precluded looking for leaking and deteriorated containers since

individual containers were obstructed from view.

55. Therefore, Respondent violated 35 IAC § 724.274 [40 C.F.R. § 264.174].

Count 4

Failure to Label Container of Used Oil

56. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

57. Containers and above ground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil." 35 IAC § 739.122(c)(1) [40 C.F.R. § 279.22(c)(1)].

58. On the day of the inspection, one container of used oil was not labeled with the words, "Used Oil."

59. Therefore, Respondent violated 35 IAC § 739.122(c)(1) [40 C.F.R. § 279.22(c)(1)].

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 \$28,242. 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.

61. Respondent must pay the \$28,242 civil penalty in four (4) installments with interest as follows:

Installment	Due By	Payment Amount	Principal	Interest (1%)
Payment #1	Within 30 days of the effective date of the CAFO	\$7,084.04	\$7,060.50	\$23.54
Payment #2	Within 360 days of the effective date of the CAFO	\$7,254.66	\$7,060.50	\$194.16
Payment #3	Within 540 days of the effective date of the CAFO	\$7,131.11	\$7,060.50	\$70.61
Payment #4	Within 720 days of the effective date of the CAFO	\$7,095.80	\$7,060.50	\$35.30
	Totals:	\$28,565.61	\$28,242.00	\$323.61

62. Respondent must pay the installments by sending cashier's or certified checks, payable to "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 and the docket number of this CAFO.

63. A transmittal letter, stating, Respondent's name, the case title, Respondent's

complete address, and the case docket number of this CAFO must accompany each installment payment. Respondent must send a copy of each check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604,

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

and,

Puja Lakhani (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. If Respondent does not pay an installment payment as set forth in paragraph 61, above, the entire unpaid balance of the civil penalty, and any amount required by paragraph 66, below, shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency. 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.

66. 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.

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 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. Respondent certifies that it is complying with 42 U.S.C. § 6922 and 35 IAC Part 722 [40 C.F.R. Part 262].

71. Immediately upon the effective date of this CAFO, Respondent will ensure that when storing hazardous waste on-site without a permit, it complies with the permit exemption conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34], including: container labeling and marking requirements; storage time restrictions; maintenance of aisle space; and container inspection requirements.

72. Immediately upon the effective date of this CAFO, Respondent will ensure that all containers of used oil are marked with the words, "Used Oil."

73. 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).

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

75. 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.

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

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

Electro-Max, Inc., Respondent

11/26/13
Date


Kevin Grant
President
Electro-Max, Inc.

United States Environmental Protection Agency, Complainant

12/23/2013
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Electro-Max, Inc.
Docket No. RCRA-05-2014-0005

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.

12/27/13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



Consent and Final Order
In the Matter of: Electro-Max, Incorporated

DOCKET NO: **RCRA-05-2014-0005**



CERTIFICATE OF SERVICE

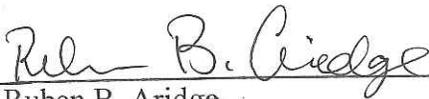
I hereby certify that today I filed the original of this Consent Agreement and Final Order ((CAFO) docket number **RCRA-05-2014-0005** the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second 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. Kevin Grant, President
Electro-Max, Incorporated
105 North Rowell Road
Hampshire, Illinois 60140
Certified Mail # **7009 1680 0000 7663 7053**

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 30th day of December 2013.



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 7663 7053