



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

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CLERK

**BY HAND**

August 6, 2010

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Re: In re. Franklin Non-Ferrous Foundry, Inc., EPA Docket No. RCRA-01-2010-0053

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint, Compliance Order and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Andrea Simpson".

Andrea Simpson  
Senior Enforcement Counsel

Enclosures

cc: Mr. John R. Wiehl, Franklin Non-Ferrous Foundry, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

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In the Matter of:	)	EPA Docket No. RCRA-01-2010-0053
	)	
FRANKLIN NON-FERROUS FOUNDRY, INC.	)	<b>COMPLAINT, COMPLIANCE</b>
293 Sanborn Street	)	<b>ORDER AND NOTICE OF</b>
Franklin, NH 03235	)	<b>OPPORTUNITY FOR HEARING</b>
EPA ID No. NHD986467223	)	
	)	
Respondent	)	
	)	
Proceeding under Section 3008(a) of the	)	
Resource Conservation Recovery	)	
Act, 142 U.S.C. § 6928(a)	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing (“Order”) is filed pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, “RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22”). Respondent, Franklin Non-Ferrous Foundry, Inc., is hereby notified that the United States Environmental Protection Agency, Region 1 (“EPA”) has determined that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, New Hampshire Statutes, Chapter 147-A, and the New Hampshire Code of Administrative Rules, Section Env-Hw 502.01, by failing to conduct an adequate hazardous waste determination. EPA also provides notice of Respondent’s opportunity to request a hearing.

## **II. NATURE OF ACTION**

2. This is an action under Section 3008(a) of RCRA, 42 U.S.C. §§ 6901-6987, ordering Respondent to come into compliance with the hazardous waste regulations promulgated pursuant to RCRA.
3. Notice of commencement of this action has been given to The State of New Hampshire (“New Hampshire”) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

## **III. STATUTORY AND REGULATORY FRAMEWORK**

4. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270.
5. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are regulated as “hazardous wastes.” These regulations are set forth at 40 C.F.R. Part 261.
6. Section 3002 of RCRA, 42 U.S.C. § 6922, required EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and relate to such matters as determining whether a waste is hazardous, container management, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.
7. In 1984, Congress substantially amended RCRA with the Hazardous and Solid Waste Amendments (“HSWA”) to, among other things: (a) restrict the disposal of hazardous wastes

on the land or in landfills; and (b) change the method for determining whether wastes are toxic (and therefore hazardous). RCRA Section 3004(c)-(p), 42 U.S.C. § 6924(c)-(p).

8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.
9. In 1984, EPA granted New Hampshire final authorization to administer its hazardous waste program in lieu of the federal government's base RCRA program. See 49 Fed. Reg. 49092 (December 18, 1984). Final authorization of the New Hampshire hazardous waste program became effective on January 3, 1985.
10. Effective January 13, 1995 and April 28, 2006, New Hampshire received final authorization for revisions to its hazardous waste management program. See 59 Fed. Reg. 56397 (November 14, 1994) and 71 Fed. Reg. 9727 (February 27, 2006).
11. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. § 6928(a) and 6926(g), EPA may enforce the federally-approved New Hampshire hazardous waste program, as well as the federal regulations promulgated pursuant to the HSWA, by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e.
12. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

#### **IV. GENERAL AND FACTUAL ALLEGATIONS**

13. Franklin Non-Ferrous Foundry, Inc. (“Respondent” or “Franklin”) is a corporation established under the laws of the State of New Hampshire, having a principal place of business at 293 Sanborn Street, Franklin, New Hampshire 03235.
14. As a corporation, Franklin is a “person” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(15), and Env-Hw 104.23.
15. At all times relevant to the allegations set forth in this Complaint, Franklin has been and is the “owner,” as defined in 40 C.F.R. § 260.10 and Env-Hw 104.20, of a facility located at 293 Sanborn Street, Franklin, New Hampshire (“Facility”).
16. At all times relevant to the allegations set forth in this Complaint, Franklin has been and is the “operator” as defined in 40 C.F.R. § 260.10 and Env-Hw 104.19, of the Facility.
17. At all times relevant to the allegations set forth in this Complaint, Franklin has been and is performing metal casting manufacturing at the Facility.
18. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), Franklin notified EPA that it was a generator of hazardous waste. The Facility bears the EPA ID No. NHD986467223. The date of the notification was June 28, 1988.
19. At all times relevant to this Complaint, Franklin generated and continues to generate “hazardous waste,” as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and Env-Hw 103.62, at the Facility. Hazardous wastes that are currently generated or have been generated at the Facility include waste foundry sand contaminated with lead and/or cadmium.
20. As the owner and operator of a facility which generates hazardous waste, Franklin is subject to the requirements for generators of hazardous wastes set forth at Env-Hw 500-514.

21. At all times relevant to the allegations set forth in this Complaint, Franklin has been and is: (1) a “generator,” as that term is defined in 40 C.F.R. § 260.10 and Env-Hw 103.58; and (2) a “full quantity generator,” as that term is defined in Env-Hw 103.57, of lead waste.
22. On April 22, 2009, duly authorized representatives of the United States Occupational Safety and Health Agency (“OSHA”) conducted an inspection at the Facility.
23. During the inspection, the OSHA representatives observed approximately 120 55-gallon containers of waste. At the time of the inspection, the Facility’s foreman stated that the waste material had been accumulating for years because it was too expensive to properly dispose of it.
24. On December 16, 2009, duly authorized representatives from EPA took samples from some of the approximately 120 55-gallon containers of waste observed by OSHA. The analytical results for the containers sampled showed lead at concentrations ranging from 7.4 mg/l to 87.9 mg/l and cadmium at concentrations ranging from 38.1 mg/l to 39.9 mg/l.
25. Under Env-Hw 403.06, wastes that have a concentration of lead equal to or greater than 5.0 mg/l bear the characteristic of toxicity.
26. Under Env-Hw 403.06, wastes that have a concentration of cadmium equal to or greater than 1.0 mg/l bear the characteristic of toxicity.
27. Pursuant to Env-Hw 403.01, the contents of the containers of waste sampled at the Facility exhibited the characteristic of toxicity for lead and cadmium because the sampled waste exceeded the thresholds for those constituents.

## **V. VIOLATION**

### **COUNT I: Failure to Conduct Adequate Hazardous Waste Determinations**

28. The allegations of paragraphs 1-27 are re-alleged as if fully set forth herein.

29. Pursuant to Env-Hw 502.01, all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Hw 401.01.
30. Pursuant to Env-Hw 502.01(c), if a waste is not listed in Env-Hw 402, a generator shall determine whether the waste is identified in Env-Hw 403 or constitutes a hazardous waste mixture or other material regulated under Env-Hw 404 by testing the waste according to the hazardous waste determination methods set forth in Env-Hw 401.04 and Env-Hw 403 or applying the knowledge of the hazardous nature or characteristics of the waste based on the materials or processes used to generate the waste.
31. Franklin failed to determine whether the approximately 120 55-gallon containers of waste at the Facility described in paragraphs 23, 24 and 27 above were hazardous waste.
32. Franklin's failure to determine whether the approximately 120 55-gallon containers of waste at the Facility were hazardous waste constitutes a violation of Env-Hw 502.01.

#### **VI. COMPLIANCE ORDER**

33. Based on the foregoing findings, Respondent is hereby ordered to immediately achieve and maintain compliance with all applicable requirements of RCRA and Env-Hw 502.01. Specifically, immediately upon receipt of this Order, Respondent shall perform hazardous waste determinations for all wastes present at the Facility, including, but not limited to, all of the waste in the approximately 120 55-gallon containers at the Facility.
34. Further, Respondent shall immediately upon receipt of this order, properly dispose of all hazardous wastes that have accumulated at the Facility beyond 90 days. All of these hazardous wastes must be shipped off-site to a properly permitted treatment, storage or disposal facility.
35. To ensure compliance with the requirements cited in Paragraphs 33 and 34 above, Respondent shall submit to EPA, within 60 days of receipt of this Order, a written confirmation of

compliance (accompanied by a copy of any appropriate supporting documentation, such as hazardous waste manifests) or noncompliance with the requirements set forth in Paragraph 33 and 34. Any notice of noncompliance with the requirements of Paragraph 33 and 34 shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance. This statement shall specify all actions taken by Respondent to comply with Paragraph 33 and 34 of this Order.

36. The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 et seq.

37. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to:

Lisa Papetti  
Senior Enforcement Coordinator, RCRA Enforcement Unit  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code:  
Boston, MA 02109-3912  
Telephone: (617) 918-1756  
Fax: (617) 918-0756

and

Andrea Simpson, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, MA 02109-3912  
Telephone: (617) 918-1738  
Fax: (617) 918-0738



38. If Respondent fails to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.
39. This Order shall become effective immediately upon receipt by Respondent.
40. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a final order unless, no later than 30 days after the Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

#### **VII. ASSESSMENT OF PENALTIES**

41. EPA reserves its right to assess penalties and/or seek other injunctive relief for violations of the requirements cited above, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

#### **VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

42. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15, Respondent has a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with Part 22. **To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to admit, deny, or explain an allegation constitutes an admission of that allegation. Respondent's Answer must also state all arguments or circumstances that are alleged to constitute

grounds for a defense; the facts that Respondent intends to place at issue; and must specifically request an administrative hearing if such a hearing is desired. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

#### **IX. DEFAULT ORDER**

43. If Respondent fails to file a timely Answer to the Order, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Order.

#### **X. SETTLEMENT CONFERENCE**

44. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the signing of a Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Andrea Simpson, Senior Enforcement

**In the Matter of: Franklin Non-Ferrous Foundry, Inc.**  
**Docket No. RCRA 01-2010-0053**

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Copy by certified mail, return receipt requested:

John R. Wiehl, President  
Franklin Non-Ferrous Foundry, Inc.  
293 Sanborn Street  
Franklin, NH 03235

Date:

8/6/10



Andrea Simpson  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, MA 02109-3912  
(617) 918-1738