



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

JUL 03 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7001 0320 0006 0184 2213
RETURN RECEIPT REQUESTED

LR-8J

Mr. Robert Kish
President
S. P. Kish Industries, Inc.
600 West Seminary Street
Charlotte, Michigan 48813

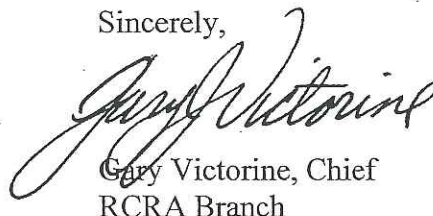
Re: Consent Agreement and Final Order
S. P. Kish Industries, Inc.
Docket No: RCRA-05-2012-0008

Dear Mr. Kish,

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on JUL - 3 2012, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$12,000 in the manner prescribed in paragraphs 47-52 of the CAFO, and reference all checks with the number BD 2751242R008 and docket number RCRA-05-2012-0008. Your 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 Victorine, Chief
RCRA Branch

Enclosures

cc: Liane Shekter Smith, MDEQ – shekterl@michigan.gov
John Craig, MDEQ – (w/CAFO) – craigj@michigan.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter Of:)	Docket No.	RCRA-05-2012-0008
)		
S.P. Kish Industries, Inc., Charlotte, Michigan,)	Proceeding to Commence and Conclude an Action to Assess a Civil Penalty Under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)	
ID No.: MID051762029)		
Respondent.)		
_____)		

RECEIVED
JUL - 3 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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, 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. 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 Michigan pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is S.P. Kish Industries, Inc., an entity incorporated and doing business in the State of Michigan.

5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 terms of this CAFO and to the civil penalty assessed herein.

JURISDICTION AND WAIVER OF THE RIGHT TO A 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 or legal violations alleged 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 or appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k.

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, pursuant to sections 3001 – 3007, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927.

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 a 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 Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986, as noticed publicly at 51 Fed. Reg. 36804 (October 16, 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 \$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 \$32,500 per day for each violation of subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and \$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 MAC § 299.9106(i), 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an “owner” or “operator,” as those terms are defined under MAC § 299.9106(f), (g) [40 C.F.R. § 260.10]¹, of a facility located at 600 West Seminary Street, Charlotte, Michigan (facility).

18. Respondent is a “generator,” as that term is defined in MAC § 299.9104(a), [40 C.F.R. § 260.10].

19. Respondent’s facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

20. At all times relevant to this CAFO, Respondent used xylene and ethyl benzene as a solvent to clean manufacturing equipment at its facility.

21. Respondent’s use of xylene and ethyl benzene as cleaning solvent generated solvent waste, which Respondent collected in 55-gallon drums and stored in the hazardous waste storage area of the facility.

22. At all times relevant to this CAFO, Respondent’s solvent waste was a “waste” as that term is defined at MAC § 299.9202 [40 C.F.R. § 261.2].

23. At all times relevant to this CAFO, Respondent’s solvent waste was a “hazardous waste” as that term is defined at MAC § 299.9203 [40 C.F.R. § 261.3].

24. At all times relevant to this CAFO, Respondent’s holding of solvent waste in 55-gallon drums constituted hazardous waste “storage,” as that term is defined under MAC § 299.9107(dd) [40 C.F.R. § 260.10].

25. At no time relevant to this CAFO had the State of Michigan issued a permit to Respondent to treat, store, or dispose of hazardous waste at its facility, nor had Respondent applied for a permit to treat, store or dispose of hazardous waste.

¹ For the purposes of this document and for convenient reference, federal corollaries to enforceable Michigan hazardous waste program requirements are provided in brackets.

26. At no time relevant to this CAFO did Respondent have interim status for the treatment, storage, or disposal of hazardous waste at its facility.

27. On or about May 5, 1986, Respondent submitted a Hazardous Waste Notification to U.S. EPA for the facility identifying itself as a generator.

Count I: Failure to Maintain Records of Annual RCRA Training

28. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

29. According to MAC § 299.9301(3)(b), a generator who stores hazardous waste on-site must comply with, among others, the applicable requirements of MAC §§ 299.9601 -- 299.9640, applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

30. According to MAC § 299.9601(3)(b), an owner or operator of a storage facility in existence on October 30, 1986, who has not applied for a permit to store hazardous waste pursuant to 40 C.F.R. § 270.10(e) and (g), must comply with the interim status standards of 40 C.F.R. part 265, including 40 C.F.R. § 265.16.

31. Federal regulations, at 40 C.F.R. § 265.16(d)(4), require that a facility maintain records of initial personnel instruction, on-the-job training or annual reviews to teach personnel to perform their jobs in a way that ensures compliance with the requirements of RCRA, as required by 40 C.F.R. § 265.16(a), (c).

32. On November 16, 2010, Respondent could not produce records that it provided initial training to its facility personnel to teach them to perform their jobs in a way that ensures compliance with the requirements of RCRA during calendar years 2006 and 2007 or that it conducted an annual review of such training in 2009 and 2010.

33. Respondent's storage of hazardous waste without maintaining records that it provided its personnel with initial RCRA training or annual training reviews in calendar years 2006, 2007, 2009, or 2010, as required by 40 C.F.R. § 265.16(d)(4), is a violation of MAC §§ 299.9601(3)(b) and 299.9301(3)(b) and subjects Respondent to the enforcement provisions of section 3008 of RCRA, 42 U.S.C. § 6928.

Count II – Failure to Maintain Records of Weekly Inspections

34. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

35. According to MAC § 299.9301(3)(b), a generator who stores hazardous waste on-site must comply with, among others, the applicable requirements of MAC §§ 299.9601 -- 299.9640, applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

36. According to MAC § 299.9601(3)(b), an owner or operator of a storage facility in existence prior to October 30, 1986, who has not applied for a permit to store hazardous waste pursuant to 40 C.F.R. § 270.10(e) and (g), must comply with the interim status standards of 40 C.F.R. part 265, including 40 C.F.R. § 265.15.

37. Federal regulations, at 40 C.F.R. § 265.15(d), require that a facility maintain records of weekly facility inspections of areas where hazardous waste is stored, as required by 40 C.F.R. § 265.15(a).

38. On November 16, 2010, Respondent could not produce records that it conducted weekly inspections of areas where hazardous waste is stored between March 21, 2009, and November 16, 2010, as required by 40 C.F.R. § 265.15(a).

39. Respondent's storage of hazardous waste without maintaining records that it conducted weekly inspections of areas where hazardous waste is stored, between March 21, 2009, and November 16, 2010, as required by 40 C.F.R. § 265.15(d), is a violation of MAC §§ 299.9601(3)(b) and 299.9301(3)(b) and subjects Respondent to the enforcement provisions of section 3008 of RCRA, 42 U.S.C. § 6928.

Count III – Failure to Maintain Proper Secondary Containment

40. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

41. According to MAC § 299.9301(3)(b), a generator who stores hazardous waste on-site must comply with, among others, the applicable requirements of MAC §§ 299.9601 -- 299.9640, applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

42. According to MAC § 299.9601(2)(g), storage facilities authorized to operate under Michigan regulations and which have not been issued or reissued an operating license under the regulations must comply with, among others, the requirements of MAC § 299.9614 in its use and management of containers.

43. Pursuant to MAC § 299.9614(1)(a), an owner or operator of a facility that stores containers of hazardous waste must comply with 40 C.F.R. part 264, subpart I, including 40 C.F.R. § 264.175.

44. Federal regulations, at 40 C.F.R. § 264.175(b)(2), require that the base of a containment system must be designed or operated to drain and remove liquids resulting from leaks, spills or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

45. On November 16, 2010, Respondent stored hazardous waste containers in an area with an improper slope to drain and remove liquids resulting from leaks, spills or precipitation, and did not elevate the containers to protect them from contact with accumulated liquids, as required by 40 C.F.R. § 264.175(b)(2).

46. Respondent's storage of hazardous waste containers in an area with an improper slope to drain and remove liquids resulting from leaks, spills or precipitation, and not elevating the containers to protect them from contact with accumulated liquids, as required by 40 C.F.R. § 264.175(b)(2), is a violation of MAC §§ 299.9614(1)(a), 299.9601(2)(g) and 299.9301(3)(b) and subjects Respondent to the enforcement provisions of section 3008 of RCRA, 42 U.S.C. § 6928.

CIVIL PENALTY

47. 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 \$12,000. In determining the penalty amount, Complainant took into account Respondent's ability to pay the proposed penalty, 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.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,000 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "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 *In the Matter of S.P. Kish Indus., Inc.*, the docket number of this CAFO and the billing document number.

49. A transmittal letter, stating, Respondent's name, the case title *In the Matter of S.P. Kish Indus., Inc.*, 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-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brenda Whitney (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

51. 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.

52. 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

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO and those alleged in the Notice of Violation dated January 19, 2011.

54. 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.

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

56. 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).

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

58. 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.

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

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


S.P. Kish Industries, Inc., Respondent

May 2, 2012
Date

S.P. Kish Industries, Inc.
By: Robert S. Kish, President
ROBERT S. KISH

United States Environmental Protection Agency, Complainant

6/29/2012
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
S.P. Kish Industries, Inc.
Docket No. RCRA-05-2012-0008

In the Matter of:
S.P. Kish Industries, Inc.
Docket No. RCRA-05-2012-0008

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.

6-29-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

CASE NAME: S. P. Kish Industries, Inc.
DOCKET NO: RCRA-05-2012-0008

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-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

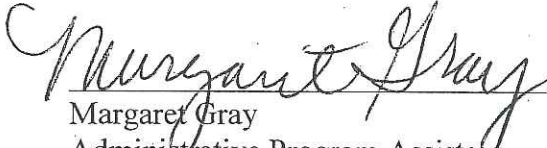
I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Robert Kish
President
S. P. Kish Industries, Inc.
600 West Seminary Street
Charlotte, Michigan 48813

Certified Mail Receipt #

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JUL - 3 2012
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: 7-3, 2012


Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Region 5
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590