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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION IX

In the matter of:)	U.S. EPA Docket No.
)	RCRA ⁹ -2008- <u>0008</u>
)	
GREIF, INC.)	CONSENT AGREEMENT
)	AND FINAL ORDER PURSUANT
)	TO 40 C.F.R. SECTIONS 22.13 and 22.18
)	
EPA I.D. No. CAD 068 880 657)	
)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), 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. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

2. Greif, Inc. ("Greif" or "Respondent") owns and operates a facility located at 2400 Cooper Avenue, Merced, California 95348 (the "Facility"). Greif acquired the Facility in 1997. The Facility's EPA identification number is CAD 068 880 657. Greif is headquartered in Delaware, Ohio, and maintains approximately 160 operating locations worldwide. Greif manufactures industrial packaging products, specifically steel, plastic, fiber, corrugated and multiwall containers and protective packaging for various industries. The Facility specializes in the manufacture of standard and specialty steel drums in a range of sizes and thicknesses to transport materials for use in the chemical, paint and coatings, food, pharmaceutical and hazardous waste industries. Because the Facility's drum output is seasonally based, its number of employees fluctuates, from approximately 65 to 70 workers in the summer, to 40 to 45 workers during the winter.

commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

4. The parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public interest, that it is consistent with the provisions and objectives of RCRA and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.

5. This action is based on EPA allegations that Respondent: (1) stored hazardous waste without a permit in violation of Title 22 of the California Code of Regulations (“C.C.R.”) §§ 66262.34 and 66270.1 [see also 40 C.F.R. §§ 262.34 and 270.1]; (2) failed to close containers of hazardous waste in violation of 22 C.C.R. § 66265.173(a) [see also 40 C.F.R. § 265.173(a)]; (3) failed to maintain the facility in such a manner as to prevent releases, in violation of 22 C.C.R. § 66265.31 [see also 40 C.F.R. § 265.31]; (4) failed to comply with air emission standards for containers, in violation of 22 C.C.R. § 66265.1087(c)(3) [see also 40 C.F.R. § 265.1087(c)(3)]; and (5) failed to comply with contingency plan requirements, in violation of 22 C.C.R. § 66265.52(e) [see also 40 C.F.R. § 265.52(e)].

D. JURISDICTION

6. On August 1, 1999, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6920, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Code of Regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations (see C.C.R. §§ 66001 et seq.).

7. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

8. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

9. Respondent’s hazardous waste manifests indicate that it is a large quantity generator of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

10. Respondent is and has been engaged in “storage” of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

11. Respondent generates and accumulates, or has generated and accumulated, materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2 (referring to “solid wastes” in lieu of “wastes”)].

12. At the Facility, Respondent generated and accumulated a number of “hazardous wastes” as defined in California Health and Safety Code § 25117 and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5) (42 U.S.C. § 6903) and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, without limitation: 1) flammable liquid, waste paint and line flush from coating steel drums, xylene, toluene, methyl ethyl ketone, methyl isobutyl ketone and high boiling aromatics (D001, D035, F003, F005); 2) flammable liquid/solid waste obsolete or off spec paint, xylene, toluene, methyl isobutyl ketone, butanol and high boiling aromatics (D001, F003, F005); 3) non-RCRA hazardous waste liquid, oil from maintenance operations, oil, absorbent, rags and debris (CA221); 4) non-RCRA hazardous waste solid, paint filters from coating booths, paint, filters, cardboard, rags and debris (CA352); and 5) non-RCRA hazardous waste, solid from grinding zinc coated steel prior to welding, zinc, grinding residue (CA181).

13. On January 8, 2007, EPA conducted a compliance evaluation inspection (“CEI”) at the Facility. Based upon the findings EPA made during the CEI, and additional information obtained subsequent to the CEI, EPA determined that Respondent had violated California Health and Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.

14. Section 3006 of RCRA, 42 U.S.C. § 6926, 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.

15. Because a violation of California’s authorized hazardous waste program (California Health and Safety Code § 25100 *et seq.*) constitutes a violation of Subtitle C of RCRA, a person who violates California’s authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA (RCRA Section 3001 *et seq.*), 42 U.S.C. § 6921 *et seq.*

17. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

permit in order to store hazardous waste at the facility pursuant to 22 C.C.R. § 66270.1 [see also 40 C.F.R. § 270.1].

20. In order to be eligible to accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status, generators of hazardous waste must, among other requirements:

- a. mark each container of hazardous waste with the date it starts accumulating hazardous waste in each container, pursuant to 22 C.C.R. § 66262.34(f)(1) [see also 40 C.F.R. § 262.34(a)(2)], and
- b. mark each container of hazardous waste clearly with the words "Hazardous Waste," with information about the composition and physical state of the waste, with a statement that calls attention to the particular hazardous properties of the waste, and with the name and address of the person producing the waste, pursuant to 22 C.C.R. § 66262.34(f)(3) [see also 40 C.F.R. § 262.34(a)(3)(4)].

21. At the time of the CEI, Respondent accumulated numerous containers of hazardous waste without: marking the start date of accumulation of the hazardous waste; the words "Hazardous Waste"; information about the composition and physical state of the waste; a statement or statements about the particular hazardous properties of the waste; or the name and address of the person producing the waste. Respondent thus failed to comply with at least two of the conditions for being able to accumulate hazardous waste for 90 days or less without a permit or interim status.

22. The following containers in the satellite accumulation area had no or incomplete labelling information: five 5-gallon buckets of discarded liner fluid; and one 55-gallon drum of still bottoms beneath the solvent distiller.

23. The following hazardous waste containers within the 90-day storage area were either unlabeled or only partially labeled: two 300-gallon steel tote containers of line flush (which had accumulation start dates but no other required labelling information; one 300-gallon steel tote container of line flush (which was labeled with an accumulation start date and its hazardous property (flammable), but had no other required labelling information); and thirteen 55-gallon drums of spent acetone, awaiting distillation (no labelling information).

24. At the time of the CEI, Respondent was not eligible for interim status under RCRA, nor was Respondent in possession of a permit to store and dispose of hazardous waste.

25. Therefore, EPA alleges that Respondent has violated 22 C.C.R. Section 66270.1 [*see also* 40 C.F.R. § 270.1].

COUNT II
Failure to Close Containers of Hazardous Waste

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.

27. 22 C.C.R. Section 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)] states that a container holding hazardous waste must always be closed during transfer and storage, except when it is necessary to add or remove waste.

28. During the CEI, EPA inspectors observed the following containers that were open: five 5-gallon buckets of spent liner; one 55-gallon drum of still bottoms beneath the solvent distiller; two drums of spent acetone awaiting distillation, which did not have locking rings; and one 300-gallon steel-tote container of spent line flush. Respondent was not adding or removing wastes from these containers the time of the CEI.

29. Therefore, EPA alleges that Respondent has violated 22 C.C.R. Section 265.173(a) [*see also* 40 C.F.R. § 265.173(a)].

COUNT III
Failure to Maintain the Facility in Such a Manner as to Prevent Releases

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. Title 22 C.C.R. Section 66262.34(a)(4) states that a generator may accumulate hazardous waste on-site without a permit provided that the generator complies with the applicable requirements of Articles 3 and 4 of Chapter 15 of the environmental health standards for the management of hazardous waste (Division 4.5 of Title 22) [*see also* 40 C.F.R. § 265.34]. 22 C.C.R. Section 66265.31 (Article 3) states that facilities shall be maintained and operated to

32. During the CEI, inspectors noted extensive waste residue coating the floor of the Facility in the proximity of several five-gallon buckets that collect excess liner in the steel cutting area of the Facility.

33. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66265.31 [see also 40 C.F.R. § 265.31].

COUNT IV Failure to Comply With Subpart CC Air Emission Standards for Tanks and Containers

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were set forth here in their entirety.

35. Title 22 C.C.R. Section 66262.34 states that a generator must meet the requirements of Article 28.5 of Chapter 15 of the Environmental Health Standards for the management of hazardous waste (Division 4.5 of Title 22) [see also 40 C.F.R. § 262.34 and 40 C.F.R. Part 265 Subpart CC]. This article includes, without limitation, 22 C.C.R. § 66265.1087, which requires generators to control air pollutant emissions from tanks and containers [see also 40 C.F.R. § 265.1087].

36. Pursuant to Article 28.5, there are two levels of air emission controls for tanks (Tank Level 1 and Tank Level 2) based on the size of the tank, maximum organic vapor pressure of the waste, and whether the tank is used in a waste stabilization process. Tank Level 1 controls are applicable to Respondent's tanks.

37. Title 22 C.C.R. Section 66265.1087(c)(1) (Article 28.5) [see also 40 C.F.R. § 265.1087(c)(1)] requires that all tanks must be equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps or other open spaces into the interior of the container.

38. During the CEI at the Facility, inspectors noted that one 300-gallon steel tote containing line flush in Hazardous Waste Storage Area #1 was left open.

39. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66265.1087(c)(1)(B) [see also 40 C.F.R. § 265.1087(c)(1)(B)].

COUNT V
Failure to Comply with Contingency Plan Requirements

40. Paragraphs 1 through 39 above are incorporated herein by this reference as if they were set forth here in their entirety.

41. Title 22 C.C.R. Section 66262.34 states that a large quantity generator must meet the requirements of Article 4 of Chapter 15 of the environmental health standards for the management of hazardous waste (Division 4.5 of Title 22) [*see also* 40 C.F.R. § 262.34].

42. Article 4 includes 22 C.C.R. §§ 66265.50 through 66265.56 [*see also* 40 C.F.R. § 265.50 through 40 C.F.R. § 265.56], which set forth contingency plan and emergency procedure requirements. In particular, 22 C.C.R. § 66265.52(e) [*see also* 40 C.F.R. § 265.52(e)] requires, in part, that each contingency plan must include an up-to-date list of all emergency equipment at the Facility, including the location and physical description of each item on the list, and a brief outline of its capabilities.

43. During their inspection in January 2007, EPA inspectors determined that the contingency plan at Respondent's facility did not provide the location and physical description of all emergency equipment on the premises.

44. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66265.52 [*see also* 40 C.F.R. § 265.52].

D. CIVIL PENALTY

45. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring on January 31, 1997 but before March 16, 2004, and a penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring March 15, 2004 or thereafter. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the June 2003 "RCRA Civil Penalty Policy", including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed NINE THOUSAND FOUR HUNDRED TWELVE DOLLARS (\$9,412.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the June 2003 RCRA Civil Penalty Policy.

compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

47. Respondent neither admits nor denies any allegations of fact or law set forth in Paragraph 13 or Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

48. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership of the facility and shall notify EPA at least seven (7) days prior to such transfer. Respondent shall authorize by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to

THOUSAND FOUR HUNDRED TWELVE DOLLARS (\$9,412.00) in full settlement of the

53. Respondent shall submit payment of the NINE THOUSAND FOUR HUNDRED TWELVE DOLLARS (\$9,412.00) civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. (As defined in Paragraph 68, the Effective Date of this CA/FO is the date the Regional Hearing Clerk files the Final Order signed by the Regional Judicial Officer.) All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this action.

All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

At the time payment is made, Respondent shall send a copy of the check to:

Danielle Carr
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Loren Henning (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

54. In accordance with the Debt Collection Improvement Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will be assessed on the unpaid balance at the current rate published by the U.S. Treasury Department.

68. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent

3/10/08
Date

Greif, Inc.
GREIF, INC.
Name: Wayde A. Hyatt
Title: V.P. / G.M. S.W.W.

United States Environmental Protection Agency

3/3/08
Date

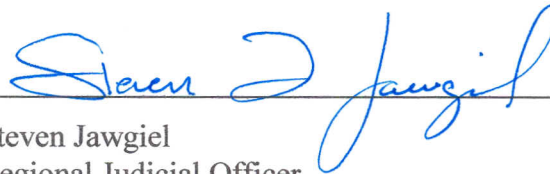
[Signature]
Nancy Lindsay
Acting Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-20080008) be entered and that Greif, Inc. pay a civil penalty of NINE THOUSAND FOUR HUNDRED TWELVE DOLLARS (\$9,412.00), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made by certified or cashier's check made out to the Treasurer of the United States, and sent to: the U.S. Environmental Protection Agency, Fines and Penalties, 1200 Jefferson Avenue, St. Louis, MO 63117-7600. A copy of the check shall be sent to the EPA Region IX address specified in Section G of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

03/28/08

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX