



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 24 2011

Mr. David Bennett
3315 Katie Drive
Blackshear, Georgia 31516

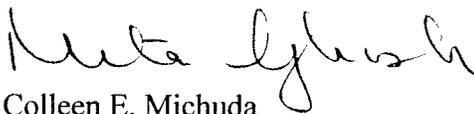
Re: Consent Agreement and Final Order
BRAL Holdings, LLC
Docket No. RCRA-04-2011-4009(b)

Dear Bennett:

Enclosed, is a copy of the executed Consent Agreement and Final Order (CA/FO) in the above-referenced matter that has been filed with the Regional Hearing Clerk and served as required in the Consolidated Rule of Practice, 40 C.F.R. § 22.6. Please make note of the provisions in Section VI of the CA/FO, with respect to payment of the assessed penalty, which is due within 30 days from the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Should you have any questions, please do not hesitate to call me at 404-562-9685.

Sincerely,


for Colleen E. Michuda
Associate Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:	)	DOCKET NO: RCRA-04-2011-4009(b)
)	
BRAL Holdings, LLC)	
319 Albany Avenue)	
Waycross, Georgia 31501	)	PROCEEDING UNDER SECTION
	)	3008(a) OF THE RESOURCE
	)	CONSERVATION AND RECOVERY
EPA ID No. ALD 982 123 127	)	ACT, 42 U.S.C. § 6928(a)
)	
)	
<u>Respondent.</u>)	

Regional Hearing (1/10/12)

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921 – 6939e, and the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), Ala. Code §§ 22-30-1 *et seq.*, as amended. This action is seeking civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and the AHWMMA, and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270, 273, and 279, and at Alabama Department of Environmental Management (ADEM) Administrative Code (ADEM Admin. Code) r. 335-14-1 through 335-14-9, respectively.
2. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency Region 4.
5. Respondent is BRAL Holdings, LLC, a Georgia limited liability company that was doing business in the State of Alabama at 103 South Atlanta Avenue in Sheffield, Colbert County, Alabama.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Alabama authorized program are found at Ala. Code §§ 22-30-1 et seq. and ADEM Admin. Code r. 335-14-1 through 335-14-9.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State of Alabama has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State of Alabama authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State of Alabama.
9. As the State of Alabama's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Alabama program; however, for ease of reference, the federal citations will follow in parentheses.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant gave written notice of this action to the State of Alabama before the issuance of this CA/FO.
11. Section 3004 of RCRA, 42 U.S.C. § 6922, and Section 22-30-16 of the Code of Alabama, Ala. Code § 22-30-16, requires the promulgation of standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found in 40 C.F.R. Part 264 and ADEM Admin. Code r. 335-14-5.
12. Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 22-30-12 of the Code of Alabama, Ala. Code § 22-30-12, set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found in 40 C.F.R. Parts 264 (permitted) and 265 (interim status), and ADEM Admin. Code r. 335-14-5 (permitted) and 335-14-6 (interim status).
13. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)187. (40 C.F.R. § 260.10), an "owner" is the person who owns in fee simple the property on which a facility or part of a facility is sited.
14. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)101. (40 C.F.R. § 260.10), a "facility" includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
15. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)191. (40 C.F.R. § 260.10), a "person" includes a corporation.

16. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2) (40 C.F.R. § 261.2), a “solid waste” is any discarded material that is not otherwise excluded from the regulations.
17. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3) (40 C.F.R. § 261.3), a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under ADEM Admin. Code r. 335-14-2-.01(4)(b) (40 C.F.R. § 261.4(b)) and it meets any of the criteria specified in ADEM Admin. Code r. 335-14-2-.01(3)(a)2. (40 C.F.R. § 261.3(a)(2)).
18. Pursuant to ADEM Admin. Code r. 335-14-2-.04(2)(a) (40 C.F.R. § 261.31), certain spent halogenated solvents from non-specific sources which are listed for toxicity are F001 hazardous wastes; certain spent non-halogenated solvents from non-specific sources which are listed for ignitability are F003 hazardous wastes, and which are listed for ignitability and toxicity are F005 hazardous wastes.
19. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)119. (40 C.F.R. § 260.10), a “hazardous waste management unit” is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Hazardous waste management units include surface impoundments, waste piles, land treatment areas, and landfill cells.
20. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)140. (40 C.F.R. § 260.10), a “landfill” is a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit.
21. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)75 and 335-14-1-.02(1)(a)76 (40 C.F.R. § 260.10), a “disposal facility” means a “disposal site,” which is the location where any ultimate disposal of hazardous waste occurs.
22. Pursuant to ADEM Admin. Code r. 335-14-8-.01(1)(c) (40 C.F.R. § 270.1(c)), owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under ADEM Admin. Code r. 335-14-8-.01(1)(c)5. and 6. (40 C.F.R. § 270.1(c)(5) and (6)), or obtain an enforceable post-closure document, as provided under ADEM Admin. Code r. 335-14-8-.01(1)(c)7. (40 C.F.R. § 270.1(c)(7)).
23. Pursuant to ADEM Admin. Code r. 335-14-5-.08(6) (40 C.F.R. § 264.145), the owner or operator of certain hazardous waste management units, including surface impoundments, disposal miscellaneous units, land treatment units, and landfill units must establish financial assurance for post-closure care in accordance with an approved post-closure plan.

IV. EPA ALLEGATIONS AND DETERMINATIONS

24. Respondent is a “person” as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)191. (40 C.F.R. § 260.10).
25. Respondent was the “owner” of a “facility” located at 103 South Atlanta Avenue in Sheffield, Alabama, as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)187 and

335-14-1-.02(1)(a)101. (40 C.F.R. § 260.10). This facility contains one “hazardous waste management unit” closed as a “landfill,” as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)119. and 335-14-1-.02(1)(a)140. (40 C.F.R. § 260.10).

26. On April 2, 2001, ADEM issued a post-closure permit to Delta Automotive, Inc., a previous operator of the facility, to address an area of solvent-contaminated (F001, F003 and F005) soil in the central portion of the facility. The solvent contamination resulted from an automobile parts cleaning operation in the late 1970s. Closure of this area was completed in June 1998.

27. On January 14, 2008, Ben Law, LLC, the prior owner of the facility, transferred the property to Respondent via warranty deed.

28. Between January 14, 2008, and May 19, 2009, Respondent owned the facility.

29. Following its acquisition of the facility, and during its period of ownership from January 14, 2008, through May 19, 2009, Respondent failed to apply for a post-closure permit or to submit a notification to ADEM requesting a transfer of the post-closure permit for the facility.

30. Complainant therefore alleges that during the time that Respondent owned the facility from January 14, 2008, through May 19, 2009, Respondent violated ADEM Admin. Code r. 335-14-8-.01(1)(c) (40 C.F.R. § 270.1(c)) for failing to obtain a post-closure permit for the closed hazardous waste management unit at the facility.

31. Following its acquisition of the facility, and during its period of ownership from January 14, 2008, through May 19, 2009, Respondent failed to establish a financial assurance mechanism for post-closure care of the hazardous waste management unit at the facility.

32. Complainant therefore alleges that during the time Respondent owned the facility from January 14, 2008, through May 19, 2009, Respondent violated ADEM Admin. Code r. 355-14-5-.08(6) (40 C.F.R. § 264.145) by failing to establish financial assurance for post-closure care in accordance with an approved post-closure plan.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations, and Determinations, the parties agree to the following:

33. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

34. The Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

35. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

36. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
37. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
38. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
39. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Alabama hazardous waste program.
40. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations alleged and facts stipulated to in this CA/FO.
41. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

42. Respondent consents to the payment of a civil penalty in the amount of **TWENTY SIX THOUSAND, ONE HUNDRED EIGHTY SEVEN DOLLARS (\$26,187)**, payable within thirty (30) calendar days of the effective date of this CA/FO.
43. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearinghouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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”

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, (301) 887-6548

44. Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8690

and to:

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

45. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

46. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

47. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

48. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

49. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

50. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the facility may present an imminent and substantial endangerment to human health and the environment.

51. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

52. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

53. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

IX. OTHER APPLICABLE LAWS

54. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

55. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Colleen E. Michuda
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9685
michuda.colleen@epa.gov

56. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

David Bennett
Global Green Holdings, LLC
4460 Legendary Dr., Suite 400
Destin, Florida 32541
david.robby.bennett@gmail.com

XI. SEVERABILITY

57. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

58. The effective date of this CA/FO shall be the date on which the fully executed CA/FO is filed with the Regional Hearing Clerk.

In the matter of BRAL Holdings, LLC, Docket No. RCRA-04-2011-4009(b):

AGREED AND CONSENTED TO:

For the Respondent



David Bennett

Date: 8/12/11

For the U.S. Environmental Protection Agency



Frank S. Ney, Acting Chief
RCRA and OPA Enforcement
and Compliance Branch
RCRA Division

Date: 8/18/11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:	)	PROCEEDING UNDER SECTION
	)	3008(a) OF THE RESOURCE
BRAL Holdings, LLC	)	CONSERVATION AND RECOVERY
319 Albany Avenue	)	ACT, 42 U.S.C. § 6928(a)
Waycross, Georgia 31501)	
)	
EPA ID No. ALD 982 123 127)	
)	
RESPONDENT.	)	DOCKET NO: RCRA-04-2011-4009(b)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 22nd day of Aug, 2011

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

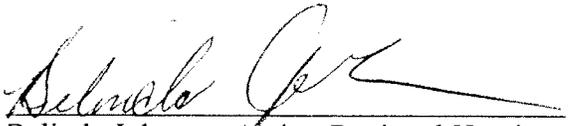
I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of BRAL Holdings, LLC, Docket Number RCRA-04-2011-4009(b), on the parties listed below in the manner indicated:

Colleen E. Michuda (Via EPA's internal mail)
Associate Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Quantindra Smith (Via EPA's internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

David Bennett (Via Certified Mail - Return Receipt Requested)
Global Green Holdings, LLC
4460 Legendary Dr., Suite 400
Destin, Florida 32541

Date 8/24/11


Belinda Johnson, Acting Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511