



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

JUL 12 2012

CERTIFIED MAIL 70010320000601846709
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

Gust Callas, Esq.
Black McCuskey
Souers & Arbaough
220 Market Ave. S., Suite 1000
Canton, Ohio 44702

Re: Consent Agreement and Final Order
Kimble Mixer Reiser Ave. Plant
Docket No: **RCRA-05-2012-0010**

Dear Mr. Callas:

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 July 12, 2012 with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$44,500 in the manner prescribed in paragraph(s) 71 to 76 of the CAFO, and reference all checks with the number BD **2751242R010** and docket number **RCRA-05-2012-0010**. Your payment is due within thirty (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
Land and Chemicals Division

Enclosures

cc: Bruce McCoy, Ohio EPA (w/CAFO)
Elizabeth A. Herron, Ohio EPA, SDEO

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. RCRA-05-2012-0010
)
Kimble Mixer Company) Proceeding to Commence and Conclude
New Philadelphia, Ohio) an Action to Assess a Civil Penalty
) Under Section 3008(a) of the Resource
) Conservation and Recovery Act,
Respondent.) 42 U.S.C. § 6928(a)

RECEIVED
JUL 12 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, as amended, 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. The 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 Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Kimble Mixer Reiser Ave. Plant, a corporation doing business in the State of Ohio.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

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 Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

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 OAC 3745-50-10(88), 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 OAC 3745-50-10(90) and (91) and 40 C.F.R. § 260.10, of a facility located at 1951 Reiser Avenue SE, New Philadelphia, Ohio 44663 (facility).

18. On August 26, 2009, U.S. EPA conducted an inspection of the facility.
19. The facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.
20. Respondent manufactures concrete mixing drums.
21. Respondent's processes at the facility produce several hazardous wastes identified or listed in OAC 3745-51-01 to 3745-51-35 or cause a hazardous waste to become subject to regulation under OAC Rules 3745-50-01 to 3745-270 [40 C.F.R. Parts 260-270].
22. Respondent is a "generator," as that term is defined in OAC 3745-50-10(45) [40 C.F.R. § 260.10].
23. Respondent produced more than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month of 2009, prior to the inspection, and was a small quantity generator.
24. During the August 26, 2009 inspection, U.S. EPA observed that Respondent created, generated, or maintained hazardous wastes including waste paint lacquer, spent solvent, spent rags, containers of used oil, used batteries, and used fluorescent lamps at its facility. During the August 2009 inspection, EPA further observed that Respondent failed to conduct a hazardous waste determination of spent rags. During the August 2009 inspection, EPA observed that Respondent failed to keep weekly, written records of container storage area inspections, and inspections of emergency equipment. During the August 2009 inspection, EPA observed that Respondent failed to obtain necessary time extensions from Ohio EPA for the storage of hazardous wastes for more than 180 days, failed to properly identify hazardous waste containers, failed to label containers accumulating hazardous waste with necessary accumulation start dates, failed to properly label 55-gallon used oil containers, and failed to keep containers accumulating

hazardous waste closed. During the August 2009 inspection, EPA observed that Respondent failed to make emergency arrangements with local hospital and police department.

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

26. At all times relevant to this CAFO, the State of Ohio has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

27. 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.

Count 1: FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

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

29. OAC 3745-52-11 requires that a person who generates a solid waste must determine whether that waste is hazardous [40 C.F.R § 262.11].

30. At the time of the August 2009 inspection, as described in paragraph 24, Respondent maintained lacquer soaked spent rags at the facility which allegedly were for continued use.

31. Respondent failed to determine whether the lacquer soaked spent rags were a hazardous waste.

32. Respondent therefore violated OAC 3745-52-11 [40 CFR § 262.11].

Count 2: FAILURE TO LABEL USED OIL CONTAINERS

33. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth

in this paragraph.

34. OAC 3745-279-22, par. (C)(1) requires generators of used oil to label used oil containers with the words "Used Oil" [40 C.F.R § 279(c)(1)].

35. At the time of the August 2009 inspection, as described in paragraph 24, Respondent failed to label eight 55-gallon drums accumulating used oil, and fourteen 55-gallons of water/oil/antifreeze in the facility's outdoor storage area with the words "Used Oil."

36. Respondent therefore violated OAC 3745-279-22, par. (C)(1) [40 C.F.R. § 279(c)(1)].

Count 3: FAILURE TO KEEP HAZARDOUS WASTE CONTAINERS CLOSED

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

38. OAC 3745-66-73, par. (A) requires generators accumulating hazardous waste in containers to keep the containers closed when not adding or removing hazardous from the containers [40 C.F.R. § 265.173(a)].

39. At the time of the August 2009 inspection, as described in paragraph 24, Respondent failed to keep two 55-gallon satellite containers accumulating hazardous waste paint lacquer closed at a time when no waste was being added or removed from the containers, which allegedly were in use during the work day.

40. Respondent therefore violated OAC 3745-66-73, par. (A) [40 C.F.R. § 265.173(a)].

Count 4: FAILURE TO KEEP WRITTEN INSPECTION RECORDS

41. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth

in this paragraph.

42. OAC 3745-66-74 requires generators accumulating hazardous waste in containers to keep written records of weekly inspections in a log [40 CFR § 265.174].

43. At the time of the August 2009 inspection, as described in paragraph 24, Respondent did not have written records of weekly inspections of its hazardous waste storage area.

44. Respondent therefore violated OAC 3745-66-74 [40 CFR § 265.174].

45. OAC 3745-65-33 requires generators accumulating hazardous waste to keep written records of facility emergency equipment inspections in a log [40 CFR § 265.33].

46. At the time of the August 2009 inspection, as described in paragraph 24, Respondent did not have written records of facility emergency equipment inspections.

47. Respondent therefore violated OAC 3745-65-33 [40 CFR § 265.33].

**Count 5: FAILURE TO MAKE EMERGENCY ARRANGEMENTS WITH
THE LOCAL EMERGENCY AUTHORITIES**

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

49. OAC 3745-65-37, par. (A) requires generators accumulating hazardous waste in containers to make appropriate emergency arrangements with local emergency authorities [40 CFR § 265.37(a)].

50. At the time of the August 2009 inspection, as described in paragraph 24, Respondent had not made appropriate emergency arrangements with local hospital and police department. Respondent had contacted the fire department which had conducted an inspection of the facility.

51. Respondent therefore violated OAC 3745-65-37, par. (A) [40 CFR § 265.37(a)].

**Count 6: FAILURE TO COMPLY WITH PERMIT EXEMPTION
CONDITIONS AND FAILURE TO OBTAIN HAZARDOUS
WASTE PERMIT FOR TREATMENT AND STORAGE OF
HAZARDOUS WASTE**

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

53. Pursuant to 3005(a) or RCRA, 42 U.S.C. § 6925(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.

54. Pursuant to OAC 3745-52-34, par. (C) and (D) [40 C.F.R. § 262.34(c) and (d)], and subject to certain exceptions, a small quantity generator of hazardous waste may accumulate hazardous waste on-site for 180 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions of OAC 3745-52-34, par. (C) and (D) [40 C.F.R. § 262.34(c) and (d)].

55. If the conditions of OAC 3745-52-34 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under OAC 3745-50-41(A), 3745-50-45(A) [40 C.F.R. §§ 270.1(c), 270.10(a) and (d)].

56. At the time of the August 2009 inspection, as described in paragraph 24, Respondent stored hazardous waste paint lacquer in hazardous waste containers more than 180 days without obtaining an extension of time from Ohio EPA and without a hazardous waste storage license 3745-52-34, par. (F) (40 C.F.R. § 262.34(f)].

57. At the time of the August 2009 inspection, as described in paragraph 24,

Respondent failed to properly label two satellite and six accumulation containers of hazardous waste, and failed to date six containers accumulating hazardous waste with the accumulation start dates OAC 3745-52-34, par. (C) and (D) [40 C.F.R. § 262.34(c)-(d)].

58. As set forth above, Respondent did not meet the conditions of OAC 3745-52-34, par. (C) and (D) [40 C.F.R. § 262.34(c) and (d)] 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, and the regulations found at OAC 3745-50-41(A), 3745-50-45(A) [40 C.F.R. §§ 270.1(c), 270.10(a) and (d)].

Civil Penalty

59. 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 \$44,500. 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.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$44,500 civil penalty for the RCRA violations payable to the "Treasurer, United States of America," and sent by electronic fund transfer to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of:

Kimble Mixer Company,” the docket number of this CAFO, and the billing document number.

61. A transmittal letter, stating Respondent’s name, the case title, Respondent’s complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the electronic funds transfer and transmittal letter to:

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

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

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

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

63. 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.

64. 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

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

66. 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, nor shall anything in this CAFO be construed to limit the right of Respondent to any defenses it may have to any other alleged violations.

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

68. 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).

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


70. 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.

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

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


Kimble Mixer Company, Respondent

6/14/12
Date


Mr. Jeffrey Bust,
President of Kimble Mixer Company

United States Environmental Protection Agency, Complainant

July 9, 2012
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

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In the Matter of:
Kimble Mixer Company
Docket No. RCRA-05-2012-0010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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.

July 11, 2012
Date


Susan Hedman
Regional Administrator
United States Environmental Protection Agency

Region 5

STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE CONTROL
OFFICE OF REGIONAL
COUNCILS

CASE NAME: Kimble Mixer Reiser Ave. Plant
DOCKET NO: RCRA-05-2012-0010

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. Gus Callas, Esq.
Black McCuskey
Souers & Arbaough
22 Market Ave. S., Suite 1000
Canton, Ohio 44702

Certified Mail Receipt #

RECEIVED

JUL 12 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: 7/12, 2012

Rubén B. Aridge

Ruben B. Aridge
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