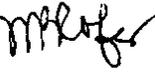


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
In the Matter of: John R. Browning d/b/a R and B Trucking
Docket No. RCRA-03-2008-0121

FROM: Abraham Ferdas, Director 
Waste and Chemicals Management Division

William C. Early 
Regional Counsel

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order both commences and concludes a matter negotiated in settlement of an alleged violation of the authorized West Virginia Hazardous Waste Management Regulations ("WVHWMR"), enforceable by EPA under Section 3008(a) of Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.13(b).

The attached Final Order directs Respondent to pay a civil penalty in the amount of \$14,490.00 and perform a Supplemental Environmental Project as described in the CAFO.

We recommend that you sign the attached Final Order. After you execute the Final Order, please return the documents to Joyce Howell, x2644, for further processing.

Attachments

cc: John Browning

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:
John R. Browning,
d/b/a R and B Trucking
202 Central Avenue
Wayne, WV 25570

Docket No. RCRA-03-2008-0121

RESPONDENT

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III ("EPA", "Agency" or "Complainant") and John R. Browning, d/b/a R & B Trucking ("R and B" or "Respondent") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. This Consent Agreement ("CA") and the accompanying Final Order ("FO") address violations by Respondent of RCRA and the West Virginia Hazardous Waste Management Regulations ("WVHWMR") Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 which incorporate by reference 40 C.F.R. Parts 260-279 (1999 ed.). The WVHMR, were reauthorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926, on October 16, 2003, and became effective on December 15, 2003 (68 Fed. Reg. 59542 (Dec. 15, 2003)).
3. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CA and the attached FO

(hereinafter jointly referred to as this "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to resolve alleged violations of RCRA and WVHWMR by Respondent.

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 4, above.
6. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the State of West Virginia

10. EPA has given the State of West Virginia, through the West Virginia Department of Environmental Protection ("WVDEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

11. Respondent is, and was at the time of the violations alleged herein, an individual operating as a sole proprietorship having its principal place of business located at 202 Central Avenue, Wayne, West Virginia, 22750, and is a "person" as defined in WVHWMR § 33-20-2.1.a, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.
12. Respondent is and was at the time of the violations alleged herein, engaged in the business of the offsite transportation of hazardous waste within the meaning of WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10, and

therefore is and was, at the time of the violations alleged herein, a "transporter" within the meaning of WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

13. Respondent is and, at all times relevant to the violations alleged herein, has been a transporter of materials which were and are "solid wastes" and "hazardous waste," as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.
14. On January 11, 2007 EPA issued a Request for Information to Respondent pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a).

COUNT I
(Transporter EPA Identification Number)

15. The allegations of Paragraphs 1 through 14, above, are incorporated by reference as though fully set forth at length herein.
16. WVHWMR § 33-20-6, which incorporates by reference 40 C.F.R. § 263.11(a), provides that a transporter must not transport hazardous wastes without having received an EPA identification number.
17. On eighty-eight (88) occasions, from April 27, 2005 until February 23, 2006, Respondent transported hazardous waste without having received an EPA identification number.
18. Respondent violated WVHWMR § 33-20-6, which incorporates by reference 40 C.F.R. § 263.11(a), by transporting hazardous waste without having received an EPA identification number.

III. SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protections. No more than THREE HUNDRED SIXTY FIVE (365) DAYS after receiving a true and correct copy of this fully executed and effective CAFO, Respondent shall purchase a truck (herein "Truck Purchase SEP") with an average fuel savings of twenty percent greater than the vehicle presently used by Respondent to transport hazardous waste.
20. The SEP Statement of Work shall be fully implemented within THREE HUNDRED SIXTY FIVE (365) DAYS.

21. The total required Actual SEP Expenditures to be incurred by Respondent pursuant to paragraph 19 and in accordance with the SEP SOW set forth in Attachment A hereto, shall not be less than \$103,000. Actual SEP Expenditures may include the trade-in value for the truck presently owned by Respondent and used in the transport of hazardous waste. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 23.
22. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, or grant or as injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.
23. Respondent shall submit a SEP Completion Report to EPA no later than THREE HUNDRED NINETY FIVE (395) DAYS after the effective date of this CAFO. The SEP Completion Report shall contain the following information:
 - (I) A detailed description of the SEP as implemented, describing how the SEP has fulfilled all the requirements described in the SEP SOW;
 - (ii) A description of any operating problems encountered and the solutions utilized by Respondent to address such problems;
 - (iii) An itemization of costs incurred in implementing the SEP. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures as provided by Paragraph 25. Where the SEP Completion Report includes costs incurred by Respondent not eligible for SEP credit, such costs must be clearly identified in the SEP Completion Report as ineligible for SEP credit. For purposes of this Paragraph, "Actual SEP Expenditures" shall include the cost for implementation of the Truck Purchase SEP as specified in the SEP SOW;
 - (iv) A description and a quantitative and qualitative estimation of the environmental and public health benefits resulting from implementation of the SEP; and
 - (v) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO in the form set forth below:

I certify under penalty of law that this document and all attachments are true, accurate and

complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

- 24. Failure to submit a SEP Completion Report as required by Paragraph 23, above, shall be a violation of this CAFO and Respondent shall become liable, therefore, for stipulated penalties pursuant to Paragraph 32E, below.
- 25. In itemizing the costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures. For purposes of this Paragraph, "acceptable documentation" for itemizing Actual SEP Expenditures includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the Actual SEP Expenditures for the goods and/or services for which payment is being made by Respondent. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual cost of the goods and/or services for which payment is being made.
- 26. EPA may inspect Respondent's place of business at any time to confirm that the SEP is being undertaken in conformity with the specification referenced herein.
- 27. Respondent shall maintain for inspection by EPA the original records pertaining to Actual SEP Expenditures incurred in implementing the SEP, such as purchase orders, receipts, and/or canceled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" for the SEP as provided in Paragraph 44 of this CAFO. Respondent shall also maintain non-financial records, such as work orders and work reports, documenting the actual implementation and/or performance of the SEP for a period of one year following EPA's issuance of a Letter Remittance Upon Satisfaction of Settlement Conditions for the SEP as provided in Paragraph 44 of this CAFO. In all documents and reports, including without limitation, any SEP report, submitted to EPA pursuant to this CAFO, Respondent shall, by a responsible officer in charge of the implementation of the SEP, sign and certify under penalty of law that the information contained in such document or report is true, accurate,

and complete in accordance with Paragraph 23 of this CAFO.

28. Following receipt of the SEP Completion Report described in Paragraph 23 above, EPA will do one of the following:
 - A. Notify Respondent in writing of any deficiency in the SEP Completion Report itself ("Notice of Deficiency") and grant and additional THIRTY (30) DAYS for Respondent to correct the deficiency;
 - B. Notify Respondent in writing of EPA's determination that the project has been completed satisfactorily ("Notice of Approval"); or
 - C. Notify Respondent in writing that the project has not been completed satisfactorily ("Notice of Disapproval"), in which case, EPA may seek stipulated penalties in accordance with Paragraph 32 herein.
29. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. If EPA, in its sole discretion and after completion of the Dispute Resolution Process set forth in Paragraphs 30 and 31 of this CAFO, if applicable, determines that the SEP and/or any report due pursuant to this CAFO has not been completed as set forth herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 50 herein.

V. DISPUTE RESOLUTION

30. If EPA issues a written Notice of Disapproval rejecting a SEP Completion Report pursuant to Paragraph 28, above, EPA shall grant Respondent the opportunity to object in writing to such notification of disapproval within twenty (20) days of receipt of EPA's notification. EPA and Respondent shall have an additional (30) days from the receipt by the EPA of the objection by Respondent to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within such thirty (30) day period, EPA shall provide to Respondent a written Statement of Decision and the rationale therefor.
31. In the event EPA determines after the expiration of the aforesaid 30-day dispute resolution period that a SEP has not been completed as specified herein or has issued a written Notice of Disapproval for which a timely objection has not been filed as provided in Paragraph 28C, above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 32 thru 35 and 46 of this CAFO. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP Completion Report for the purposes of the stipulated penalty provisions set forth in Paragraph 32E, below, except that the calculation of any such stipulated penalties shall not run during the pendency of the dispute resolution procedure set forth in

Paragraph 30 above, but shall instead run from the date on which Respondent received EPA's Statement of Decision pursuant to Paragraph 30 above, or, in the event that Respondent has not filed a timely objection to an EPA Notice of Disapproval, the date following the day of expiration of the 30-day dispute resolution period.

VI. STIPULATED PENALTIES

32. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP described in the SOW and/or to the extent that the Actual Expenditures for the SEP do not equal or exceed the amount of Actual SEP Expenditures required to be incurred under Paragraph 21 of this Consent Agreement, Respondent shall be liable for stipulated penalties according to the provisions below:
- A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$28,050.
 - B. If the SEP is not completed in accordance with Paragraphs 19-27, but the Complainant determines that Respondent: (i) has made good faith and timely efforts to complete the project; and (ii) has certified, with supporting documentation, that at least 95% of the Actual SEP Expenditures required to be incurred under Paragraph 21 of this Consent Agreement were expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - C. If the SEP is completed in accordance with Paragraphs 19-27, but the Respondent spent less than ninety percent (90%) of the amount of the Actual SEP Expenditures required to be incurred under Paragraph 21 of this Consent Agreement, Respondent shall pay an additional penalty of \$2,900.00.
 - D. If the SEP is completed in accordance with Paragraphs 19-27, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Paragraph 21 of this Consent Agreement, Respondent shall not be liable for any stipulated penalty;
 - E. For failure to submit the SEP Completion Report required by Paragraph 23, above, Respondent shall pay a stipulated penalty of TWO HUNDRED DOLLARS (\$200) for each day after the deadline set forth in Paragraph 23 until the report is submitted.
33. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the Dispute Resolution process set forth above

in Paragraphs 30 and 31 of this CAFO, if applicable.

34. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
35. Respondent shall pay stipulated penalties within FIFTEEN (15) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance the Paragraph 50.
36. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

VII. LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

37. In any public statement referring to this SEP, Respondent shall include language that the SEP was undertaken in connection with a settlement of an enforcement action taken by EPA. This Paragraph does not compel Respondent to make any public statement concerning the implementation of the SEP.

VIII. NON-DEDUCTIBILITY OF SEP PROJECT COSTS

38. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

IX. PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

39. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing not more than SEVEN (7) DAYS after the delay or when Respondent knew or should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void or no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek and extension of the time for performance of its obligations under this CAFO.
40. If the Parties agree that the delay or anticipated delay in compliance with this CAFO has

been or will be caused by circumstances entirely beyond the control of Respondent which could not to be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.

41. In the event that EPA does not agree that the delay in achieving compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
42. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event be a basis for changes in this CAFO or extensions of time under Paragraph 40 of this CAFO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of a subsequent step.

X. SATISFACTION OF SETTLEMENT CONDITIONS

43. A determination of compliance with the conditions set forth herein will be based upon, *inter alia*, copies of records and reports submitted by Respondent to EPA under this CAFO and any inspections of work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by respondent to Complainant regarding the matters at issue in the Factual Allegations and Conclusions of Law are false or, in any material respect, inaccurate.
44. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state Respondent has performed fully the conditions set forth in this CAFO and paid all the penalty amounts due pursuant to the terms of this CAFO.

XI. CIVIL PENALTIES

45. Respondent agrees to pay a civil penalty in the amount of **\$14,490** in settlement of the alleged violation, which Respondent agrees to pay in accordance with the terms set forth

below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO fully executed by all parties; however, Respondent may pay such civil penalty amount, and an interest assessment of five percent (5%) per annum on the outstanding principal, in three installment payments, in the following amounts and according to the following schedule:

- 1st Payment - The deadline for the first payment, in the amount of **\$4,830.00**, is thirty days after the CAFO is mailed or hand-delivered to the Respondent;
- 2nd Payment - The deadline for the second payment, in the amount of **\$5068.19**, which consists of \$4,830 in principal and \$238.19 in accrued interest, is 180 days after the CAFO is mailed or hand-delivered to the Respondent; and
- 3rd Payment - The deadline for the third payment, in the amount **\$5008.64**, which consists of \$4,830.00 in principal and \$178.64 in accrued interest, is 270 days after the CAFO is mailed or hand-delivered to the Respondent.

Payment in accordance with the above schedule results in the Respondent's *total payment of \$14,906.00*, which consists of a civil penalty payment in the aforesaid amount of \$14,490 and the payment of accrued interest in the amount of \$416.83.

- 46. Notwithstanding Respondent's agreement to pay the civil penalty in accordance with the installment payment provisions of Paragraph 45, immediately above, Respondent may pay the entire \$14,490 civil penalty within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the incurrence and payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in Paragraphs 52 and 53, below.
- 47. If Respondent elects to pay the civil penalty in accordance with the installment payment procedure described in Paragraph 45, above, but fails to make any installment payment in accordance with the requirements and schedule set forth in Paragraph 45, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent *immediately* shall pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraph 54, below, in the event of any such failure or default.

48. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
49. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which includes the seriousness of the violation and any good faith efforts to comply with the applicable requirements, EPA hereby agrees and acknowledges that payment of the civil penalty and compliance with the terms and conditions of this CAFO shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
50. Respondent shall remit the payment(s) for the civil penalty specified in Paragraph 45 above, payable to United States Treasury, using one of the payment methods set forth below:

By regular U.S. Postal Service:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 6317-9000

For overnight deliveries, street address:

United States Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004

Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Automated Clearing House (ACH) Transfers:

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

On-Line Payment:

www.pay.gov

Enter sfo 1.1 in the search field, open form and complete the required fields

All payments by Respondent shall reference its name and address and the Docket Numbers of this action (RCRA-03-2008-0121).

At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency

Region III (Mail Code 3WC31)
1650 Arch Street
Philadelphia, PA 19103-2029

51. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
53. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
54. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

XII. OTHER APPLICABLE LAWS

55. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

XIII. PARTIES BOUND

56. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent

acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

XIV. EFFECTIVE DATE

57. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

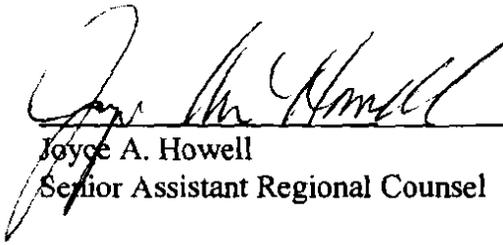
For Respondent, John R. Browning, d/b/a R and B Trucking:

Date: 3-18-08

By: 
John R. Browning

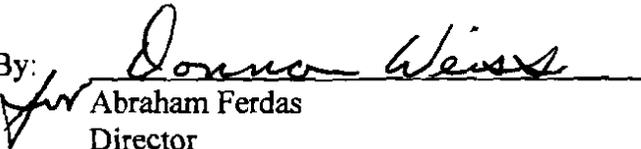
For Complainant, United States Environmental Protection Agency, Region III:

Date: 5/1/2008

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Waste and Chemicals Management Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

5/2/08
Date

By: 
Abraham Ferdas
Director
Waste and Chemicals Management Division

ATTACHMENT A

Scope of Work for R & B Trucking Supplemental Environmental Project (SEP)

R & B Trucking will purchase a new truck for hauling hazardous waste. This vehicle will replace R & B Trucking's 2002 Class 7 Freightliner (model Columbia) this is currently used for hauling hazardous waste. The new truck will have enhanced safety features, which will reduce the possibility of an accident, and thus, a release of hazardous waste. These features include, but are not limited to: a rack and pinon steering system to improve vehicle response and accuracy and an anti-lock braking system (ABS) for the front and rear axles. The cost of a truck with these features will be approximately \$110,000.

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

John R. Browning d/b/a
R and B Trucking
202 Central Avenue
Wayne, WV 25570

Docket No. RCRA-03-2008-0121

RESPONDENT

FINAL ORDER

Complainant, the Director, of the Waste and Chemicals Management Division, U.S.

Environmental Protection Agency, Region III, and Respondent, John R. Browning, d/b/a R and B Trucking, have executed a document entitled "Consent Agreement" which I hereby ratify in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation /Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 3008(a) of the Resource Conservation and Recovery Act of 1976, as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. Section 6928(a), and the Consolidated Rules of Practice, and having determined, on the basis of the parties' representations in the Consent Agreement, that the penalty agreed to therein by the parties is based on a consideration of the factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), it is hereby ordered that

Respondent pay a civil penalty in the amount of \$14,490 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

The effective date of this Consent Agreement and Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

5/15/08
Date


Renee Sarajian
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:
John R. Browning,
d/b/a R and B Trucking
202 Central Avenue
Wayne, WV 25570

Docket No. RCRA-03-2008-0121

RESPONDENT

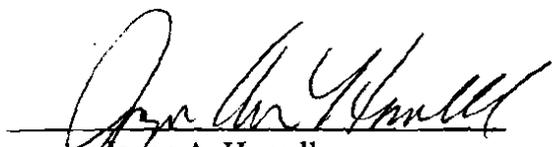
CONSENT AGREEMENT

CERTIFICATION OF SERVICE

I hereby certify that I caused the original of the Consent Agreement and Final Order to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and a true and correct copy of the same to be sent via Federal Express to:

John R. Browning,
d/b/a R and B Trucking
202 Central Avenue
Wayne, WV 25570

Date: 5/15/2008



Joyce A. Howell
Senior Assistant Regional Counsel