



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

DEC 12 2011

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL 7001 0320 0005 8915 5534
RETURN RECEIPT REQUESTED

Mr. Bruce Liimatainen
Chairman and CEO
A. Finkl & Sons Company
2011 North Southport Avenue
Chicago, Illinois 60614-4079

Re: Consent Agreement and Final Order
A. Finkl & Sons Company
Docket No:

Dear Mr. Liimatainen:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on DEC 12 2011, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$104,159 in the manner prescribed in paragraphs 104 through 109 of the CAFO and reference all checks with the number BD 2751242R002 and docket number RCRA-05-2012-0003. 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,

Paul Little, Acting Chief
RCRA Branch
Land and Chemicals Division

Enclosures

cc: Renee Cipriano, Schiff Hardin LLP, 233 South Wacker Drive, Suite 600, Chicago, IL 60606 (w/CAFO)

RECEIVED
DEC 12 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2012-0003
)	
A. Finkl & Sons Company)	Proceeding to Commence and Conclude
2011 North Southport Avenue)	an Action to Assess a Civil Penalty
Chicago, Illinois,)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID #: ILD 005 129 697)	42 U.S.C. § 6928(a)
)	
Respondent.)	
<hr/>)	

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 Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is A. Finkl & Sons Company, a corporation doing business in the State of Illinois.
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. For purposes of this administrative action, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO. Respondent is entering into this CAFO solely for the purpose of avoiding costly and protracted litigation. Respondent retains the right to controvert the factual allegations and alleged violations in any subsequent proceeding, other than a proceeding to enforce the terms of 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 is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and with 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, pursuant to Sections 3001 – 3007, and, 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and, 6934.

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 Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and, \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

17. Respondent was and is a "person" as defined by 35 IAC § 720.110, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is an "owner" or "operator," as those terms are defined under IAC § 720.110 and 40 C.F.R. § 260.10, of a facility, located at 2011 North Southport Avenue, Chicago, Illinois, that manufactures steel (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's Facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

21. Respondent manufactures forging die steels, plastic mold steels, die casting tool steels, and custom open-die forgings at the Facility.

22. At all times relevant to this CAFO, Respondent created wastes, including K061 electric arc furnace bag house dust, at the Facility which were solid wastes, as defined in 35 IAC § 721.102, 40 C.F.R. § 260.10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

23. At all times relevant to this CAFO, Respondent's solid waste identified in paragraph 22 above is a "hazardous waste" as that term is defined under 35 IAC § 721.103 and 40 C.F.R. § 261.3.

24. At all times relevant to this CAFO, Respondent's holding of hazardous waste in 55-gallon containers, cubic yard fiber bags, or roll-off containers, constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

25. Respondent is a "generator," as that term is defined in 35 IAC § 720.110 and 40 C.F.R. § 260.10.

26. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month, prior to the inspection, and was a large quantity generator.

27. On May 31, 2007, U.S. EPA conducted an inspection of the Facility (the First Inspection).

28. On April 13, 2010, U.S. EPA conducted a follow-up inspection of the Facility (the Second Inspection).

29. On September 13, 2007, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the First Inspection.

30. On November 5, 2007, Respondent submitted to U.S. EPA a written response to the Notice of Violation explaining its position with respect to the violations alleged and providing additional information that may not have been available at the time of the inspection.

31. On October 25, 2010, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the Second Inspection via a Notice of Intent to File Civil Administrative Complaint against A. Finkl & Sons Company, and Request for Information.

32. On November 9, 2010 and on December 17, 2010, Respondent submitted to U.S. EPA written responses to the Notice of Violation and to the Notice of Intent to File Civil Administrative Complaint explaining its position with respect to the violations alleged and providing additional information that may or may not have been available at the time of the inspection.

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

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

35. 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.

36. On or about August 29, 1980, Respondent submitted a Hazardous Waste Notification to U.S. EPA for the Facility.

37. In its Hazardous Waste Notification, Respondent identified itself as a generator.

**Count 1: Storage of Hazardous Waste without a Permit or Interim Status.
Failure to Provide Training and Failure to Maintain Training Records.**

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

39. Pursuant to 35 IAC § 703.121(a), 3005(a) of 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.

40. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a), including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 725 and 35 IAC § 725.116.

41. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

42. 35 IAC § 725.116(a)(2) [40 C.F.R. § 265.16(a)(2)] requires that the Facility provide a program of classroom instruction or on-the-job training directed by a person trained in hazardous waste management procedures, which includes instruction that teaches Facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

43. 35 IAC § 725.116(a)(3) [40 C.F.R. § 265.16(a)(3)] requires, at a minimum, that the Facility's training program be designed to ensure that Facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including in part, where applicable: (1) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (2) response to groundwater contamination incidents; and, (3) shutdown of operations.

44. 35 IAC § 725.116(b) [40 C.F.R. § 265.16(b)] requires that Facility personnel successfully complete the program required in paragraph (a) of 35 IAC § 725.116 [40 C.F.R. § 265.16] within six months after the effective date of the regulations or six months after the date of employment or assignment to the Facility, or to a new position at the Facility, whichever is later.

45. 35 IAC § 725.116(c) [40 C.F.R. § 265.16(c)] requires that Facility personnel take part in an annual review of the initial training required in 35 IAC § 725.116(a) [40 C.F.R. § 265.16(a)].

46. 35 IAC §§ 725.116(d)(1) and (d)(2) [40 C.F.R. §§ 265.16(d1) and (d)(2)] require that owners and operators of hazardous waste facilities maintain the following documents and records:

The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; and,

a written job description for each position listed under paragraph (d)(1) of 35 IAC § 724.116. This description may be consistent in its degree of specificity with descriptions for other positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

47. From the year 2007 to the year 2010, Respondent did not maintain sufficient documentation to allow EPA to determine whether all classroom instruction or on-the-job training received by Facility personnel satisfied the criteria of 35 IAC §§ 725.116(a)(2) relevant to the positions in which Facility personnel were employed.

48. From the year 2007 to the year 2010, Respondent did not maintain sufficient documentation to allow EPA to determine whether the training program was designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable: (1) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (2) response to groundwater contamination incidents; and, (3) shutdown of operations.

49. From the year 2007 to the year 2010, Respondent did not maintain sufficient documentation to allow EPA to determine whether Facility personnel successfully completed the program required in paragraph (a) of 35 IAC § 725.116 [40 C.F.R. § 265.16] within six months after the effective date of the regulations or six months after the date of employment or assignment to the Facility, or to a new position at the Facility, whichever is later. From the year 2007 to the year 2010, Respondent did not ensure that all Facility personnel filling a hazardous waste management position received initial training or annual review of the initial training.

50. At the time of the First Inspection and Second Inspection, Respondent failed to document job titles for each position at the Facility related to hazardous waste management, and the name(s) of the employee filling each job.

51. At the time of the First Inspection and Second Inspection, Respondent failed to maintain documents and records providing a written job description that included the requisite skill, education, or other qualifications, and duties for each position at the facility related to hazardous waste management.

52. Based on the allegations in paragraph 47 above, Respondent violated 35 IAC § 725.116(a) (2) [40 C.F.R. § 265.16(a)(2)].

53. Based on the allegations in paragraph 48 above, Respondent violated 35 IAC § 725.116(a)(3) [40 C.F.R. § 265.16(a)(3)].

54. Based on the allegations in paragraph 49 above, Respondent violated 35 IAC §§ 725.116(b) and (c) [40 C.F.R. §§ 265.16(b) and (c)].

55. Respondent's failure to maintain job titles for each position at the Facility related to hazardous waste management and the name(s) of the employee filling each job and failure to maintain records that provided a written job description for each position related to hazardous waste management, as alleged in paragraphs 50 and 51 above, violated 35 IAC §§ 275.116(d) (1) and (d) [40 C.F.R. §§ 265.16(d) (1) and (d)(2)].

56. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste storage facility subject to the requirement of 35 IAC § 724.116 [40 C.F.R. § 264.16].

57. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134,

[40 C.F.R. § 262.34] 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 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 2: Storage of Hazardous Waste without a Permit or Interim Status.
Failure to Have a Complete Contingency Plan.

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

59. Pursuant to 35 IAC § 703.121(a), 3005(a) of 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.

60. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 725, including the contingency plan requirements of 35 IAC § 725.152 [40 C.F.R. § 265.52] and 35 IAC § 725.116.

61. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

62. The failure to comply with any of the conditions of 35 IAC §§ 722.134(a)(1)-722.134(a)(4) subjects the generator of hazardous waste to the requirements of 35 IAC Part 724 or 725 and the permit requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123.

63. 35 IAC § 725.152(d) [40 C.F.R. § 265.52(d)] requires that a hazardous waste storage facility's contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date.

64. 35 IAC § 725.152(e) [40 C.F.R. § 265.52(e)] requires that a hazardous waste storage facility's contingency plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where the equipment is required, and this list must be kept up to date. The plan must also include the location and a physical description of each item on the list, and a brief outline of its capabilities.

65. 35 IAC § 725.153(b) [40 C.F.R. § 265.53(b)] requires that a hazardous waste storage facility's contingency plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

66. At the time of the First Inspection and Second Inspection, Respondent's contingency plan did not include the current emergency coordinator's name, office and home phone numbers, and address.

67. At the time of the First Inspection and the Second Inspection, Respondent's contingency plan did not include a list of all the emergency equipment at the facility, and the location and capabilities of the emergency equipment.

68. At the time of the First Inspection and Second Inspection, Respondent had not submitted its contingency plan to State and local emergency response teams that may be called upon to provide emergency services.

69. Respondent's failure to include within its contingency plan a description of the current emergency coordinator's name, office and home phone numbers; a list of all the emergency equipment at the facility, and the location and capabilities of the emergency equipment; and by failing to document that it submitted its contingency plan to all local authorities, violated 35 IAC § 725.152(d) and (e); 35 IAC § 725.153(b) [40 C.F.R. § 265.52(d) and (e); 40 C.F.R. § 265.53(b)].

70. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] 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 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 3: Storage of Hazardous Waste without a Permit or Interim Status.
Failure to Properly Label Containers of Hazardous Waste.

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

72. Pursuant to 35 IAC § 703.121(a), 3005(a) of 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.

73. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 725 and 35 IAC § 725.116.

74. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

75. The failure to comply with any of the conditions of 35 IAC §§ 722.134(a)(1)-722.134(a)(4) subjects the generator of hazardous waste to the requirements of 35 IAC Part 724 or 725 and the permit requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123.

76. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must clearly mark each container holding hazardous waste with the date of accumulation. 35 IAC § 722.134(a)(2) [40 C.F.R. § 262.34(a)(2)].

77. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must label or mark each container holding hazardous waste clearly with the words "Hazardous Waste." 35 IAC § 722.134(a)(3) [40 C.F.R. § 262.34(a)(3)].

78. At the time of the First Inspection, Respondent had not labeled or marked nine (9) cubic yard fiber bags storing K061 hazardous waste; and, one 12-yard roll-off container storing K061 hazardous waste with the words "Hazardous Waste."

79. At the time of the Second Inspection, Respondent had not labeled or marked one 55-gallon container storing K061 hazardous waste with the words "Hazardous Waste."

80. At the time of the First Inspection, Respondent had not marked nine (9) cubic yard fiber bags storing K061 hazardous waste; and one 12-yard roll-off container storing K061 hazardous waste with a date of accumulation.

81. At the time of the Second Inspection, Respondent had not marked one 55-gallon container storing K061 hazardous waste with a date of accumulation.

82. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] 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 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

83. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 4: Storage of Hazardous Waste without a Permit or Interim Status.
Failure to Minimize the Possibility of Release of Hazardous Waste.

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

85. Pursuant to 335 IAC § 703.121(a), 3005(a) of 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.

86. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 725 and 35 IAC § 725.116.

87. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

88. The failure to comply with any of the conditions of 35 IAC §§ 722.134(a)(1)-722.134(a)(4) subjects the generator of hazardous waste to the requirements of 35 IAC Part 724 or 725 and the permit requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123.

89. 35 IAC § 725.131 [40 C.F.R. § 265.31] requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

90. At the time of the First Inspection and Second Inspection, Respondent was storing K061 hazardous waste in containers on concrete pads of the East and West K061 electric arc furnace bag house dust loading areas. Neither of the loading areas contained a fully enclosed roof

or a total of four walls, determined by EPA as necessary to qualify as containment buildings, nor were able to completely contain the K061 electric arc furnace dust. Dirt roads were also located adjacent to the loading areas.

91. Based on the allegations in paragraph 90 above, Respondent violated 35 IAC § 725.131 [40 C.F.R. § 265.31].

92. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] 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 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 5: Failure to Submit an Exception Report.

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

94. As a result of Respondent generating greater than 1000 kilograms of hazardous waste in a calendar month, Respondent is subject to the requirements of 35 IAC § 722.142(a)(2) [40 C.F.R. § 262.42(a)(2)].

95. 35 IAC § 722.142(a)(2) [40 C.F.R. § 262.42(a)(2)] requires that facilities who generate greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the EPA Regional Administrator for the Region, in which the generator is located, if it has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter.

96. At the time of the First Inspection, Respondent had not submitted Exception Reports to the EPA Regional Administrator for Region 5 when Respondent had not received copies of fourteen (14) manifests, with the handwritten signature of the owner or operator of the designated facility, within forty-five (45) days of the date the waste was accepted by the initial transporter.

97. Respondent's failure to submit Exception Reports to the EPA Regional Administrator for Region 5 when Respondent had not received copies of fourteen (14) manifests, with the handwritten signature of the owner or operator of the designated facility, within forty-five (45) days of the date the waste was accepted by the initial transporter, violated 35 IAC § 722.142(a)(2) [40 C.F.R. § 262.42(a)(2)].

Count 6: Failure to Maintain a copy of the Land Disposal Restriction Notification.

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

99. As a result of Respondent generating greater than 1000 kilograms of hazardous waste in a calendar month, Respondent is subject to the requirements of 35 IAC § 728.107(a)(8) [40 C.F.R. § 268.7(a)(8)].

100. 35 IAC § 728.107(a)(8) [40 C.F.R. § 268.7(a)(8)] requires that generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal.

101. At the time of the Inspection, Respondent had not retained a copy of the land disposal notifications, for any of the hazardous waste generated and shipped off-site for treatment, storage, or disposal.

102. Respondent's failure to retain a copy of the land disposal notifications, violated 35 IAC § 728.107(a) (8) [40 C.F.R. § 268.7(a)(8)].

103. 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 one-hundred four thousand one hundred fifty-nine dollars (\$104,159). In determining the penalty amount, Complainant took into account the seriousness of the violation and Respondent's good faith efforts to demonstrate and achieve compliance with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

104. Within thirty (30) days after the effective date of this CAFO, Respondent must pay a \$104,159 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

105. The check must state the case name, the docket number of this CAFO and the billing document number.

106. A transmittal letter, stating the case name, Respondent's complete address, the case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

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

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

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

[for electronic funds transfer][by electronic funds transfer, payable to "Treasurer, United States of America," and sent 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"

[for ACH, also known as REX or remittance express][by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:]

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

[for on-line payment][by on line payment. To pay on line go to:]

WWW.PAY.GOV

Use the Search Public Forms option and enter 'sfo 1.1' in the search field.
Open form and complete required fields.

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

108. 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.

109. 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

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

111. 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.

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

113. 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).

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

115. 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.

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

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


A. Finkl & Sons Company, Respondent

11/18/11
Date


Mr. Bruce Liimatainen
Chairman and CEO
A. Finkl & Sons Company

United States Environmental Protection Agency, Complainant

12/6/11
Date


Margaret M. Guerriero
Director
Land and Chemicals Division


RECEIVED
DEC 12 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:
A. Finkl & Sons Company
Docket No. RCRA-05-2012-0003

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.

12-9-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CASE NAME: A. Finkl & Sons Company
DOCKET NO: RCRA-05-2012-0003

RECEIVED

DEC 12 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:


Mr. Bruce Liimatainen
Chairman and CEO
A. Finkl & Sons Company
2011 North Southport Avenue
Chicago, Illinois 60614-4079

Certified Mail # 7001 0320 0005 8915 5534

Ms. Renee Cipriano
Schiff Hardin LLP
233 South Wacker Drive, Suite 600
Chicago, Illinois 60606

Certified Mail # 7001 0320 0006 1468 3452

Dated: December 12, 2011


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