

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

2014 MAY 13 AM 8:52

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
Continental Cement Company, L.L.C.)
Green America Recycling, L.L.C.)
)
10104 Highway 79 South)
Hannibal, Missouri 63401)
)
EPA I.D. No. MOD054018288)
)
Respondent.)
Proceeding under Sections 3008(a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. §§ 6928(a) and (g).)
)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2013-0031

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) and Continental Cement, L.L.C. and Green America Recycling, L.L.C., (collectively “Respondents”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Section I

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA believes that Respondents violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 40 C.F.R. Part 262, as incorporated at 10 C.S.R. 25-5.262(1).

Section II

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, pursuant to the following delegations by the Administrator of EPA: Delegation No. 8-9-A, dated May 11, 1994; Delegation No. R7-8-9-A, dated June 14, 2005; and Delegation No. R7-Div-8-9-A, dated June 15, 2005.

4. The Respondents are Continental Cement Company, L.L.C. and Green America Recycling, L.L.C. Continental Cement Company (CCC) is a Delaware Limited Liability Company that is registered as a foreign limited liability company, authorized to do business in the state of Missouri. Green America Recycling (GAR) is a Missouri registered business.

Statutory and Regulatory Framework

5. The State of Missouri (Missouri) has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Missouri has adopted by reference the federal regulations cited herein at pertinent parts of Title 10, Division 25 of the Missouri Code of State Regulations (hereinafter "10 C.S.R. 25"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. When a RCRA violation occurs in a state that is authorized to implement a hazardous waste program pursuant to Section 3006, 42 U.S.C. § 6926, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

7. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

General Factual Allegations

8. Respondents own and/or operate a facility located at 10107 Highway 79 South, Hannibal, Missouri 63401-0071 (the "Facility").

9. The Facility is adjacent to the Mississippi River to the east and agricultural property on all other sides.

10. Continental Cement Company operates a dry process cement kiln at the Facility. The kiln has a four stage preheater and precalciner.

11. Green America Recycling was formed to operate the treatment and storage activities at the Facility.

12. Respondents are "persons" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. Based on the amounts generated, Respondents are large quantity generators of hazardous waste, used oil generators, processors and burners, and small quantity handlers of universal waste.

14. The Facility is operated 24 hours per day, seven days a week.

15. There are approximately 200 employees at Continental Cement Company and Green America Recycling, combined.

16. The Facility includes a limestone quarry, a dry process cement kiln, a receiver terminal and a hazardous waste derived fuel (HWF) treatment and storage facility.

17. A Missouri Hazardous Waste Management Facility Permit was issued to Continental Cement Company as Owner of the Facility and Operator of the Cement Kiln and to Green America Recycling as Operator of Treatment and Storage units in accordance with Section 260.375.13, RSMo and Section 3005 of RCRA, 42 U.S.C. § 6925, and 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.1(b).

18. The permit was issued by the Missouri Department of Natural Resources (MDNR) in October 1999, and modified in August 2008 for installation of a dry process cement kiln. In October 2009, Respondents submitted an application to MDNR for permit renewal. The permit renewal is under review by MDNR. The old permit remains in effect until the new permit is issued in accordance with 10 C.S.R. 25-7.270 incorporating by reference 40 C.F.R. § 270.51.

19. The permit allows for the storage and treatment, including processing in an industrial furnace of characteristic hazardous waste, as well as various "F", "K", "P" and "U" listed hazardous wastes.

20. Coal is burned in the kiln for primary fuel. Solid and liquid hazardous wastes are burned for energy recovery in the kiln system as alternate supplement fuels. Hazardous wastes generated on-site and off-site are stored and blended on-site for use as kiln fuel.

21. Liquid hazardous waste is blended and stored in tanks until being fed into the kiln as liquid fuel.

22. Solid hazardous waste is stored in containers until processed and blended for HWF.

23. The permitted hazardous waste management areas are:

- a) Six 25,000 gallon treatment, storage and blend tanks;
- b) Three 75,000 gallon treatment, storage and blend tanks;
- c) Two containment buildings with combined storage capacity of 1,545 cubic yards;
- d) Five miscellaneous treatment units; and
- e) Four container storage areas with a combined capacity of 817,250 gallons.

24. Respondents conduct and record inspections of hazardous waste management and storage areas each day. Inspections are conducted in the following areas: tanks, tanks' ancillary equipment, container receiving areas, the container processing and storage areas, containment areas, and the bulk handling and processing areas.

25. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporates by reference the regulations at 40 C.F.R. Part 261.

26. Respondent, Continental Cement Company filed a notification of hazardous waste activity on March 22, 1990, stating that Continental Cement was a large quantity generator, treater, storer or disposer of hazardous waste in Missouri pursuant to 40 C.F.R. § 262.34, incorporated by reference at 10 C.S.R. 25-5.262(1).

27. Respondents have been assigned a facility identification number of MOD054018288.

28. On May 30-31, 2012 EPA conducted an inspection at Respondents' facility.

Violations

29. Complainant hereby states and alleges that Respondents have violated RCRA and federal and state regulations promulgated thereunder, as follows:

Count 1

Containers not Maintained in Good Condition

30. The allegations stated in Paragraphs 8 through 28 are realleged and incorporated as if fully set forth herein.

31. Pursuant to Special Permit Condition I.D.1 and 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R. § 264.171 any container holding hazardous waste must be in good condition or the owner or operator must transfer the hazardous waste to a container that is in good condition.

32. At the time of May 2012 inspection, in the Container Storage Areas #3 and #5, the EPA inspector found the following containers that were not in good condition:

- a) Roll-off Containers #20232-2 and 20282-2, which contained hazardous waste feed mixtures, had lids that were bent and damaged to the extent that they would not close in certain areas.

- b) Roll-off Containers #20310, 20289, and 3008, which contained hazardous waste feed mixtures, were severely rusted and/or had large holes in their sides and/or tops.

33. At the time of the inspection, the containers listed in the Paragraph above were inspected daily, including monitoring for fugitive emissions and lined with a plastic liner prior to placing materials in them.

34. Respondents' alleged failure to maintain the containers listed in Paragraph 32 in good condition is a violation of Special Permit Condition I.D.1 and 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R. § 264.171.

Count 2

Inadequate Secondary Containment

35. The allegations stated in Paragraphs 8 through 28 are realleged and incorporated as if fully set forth herein.

36. The regulations at 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R.264.175(b)(1) and Special Permit Condition I.H.1, requires that containers storing free liquids shall be underlain by a base that is free of cracks and gaps.

37. Container Storage Area #1 stores containers that contain free liquid.

38. Wastes stored in Container Storage Area #1 included various liquid hazardous wastes in 55-gallon drums.

39. Container Storage Area #1 had floor sealant that was deteriorated in two areas. The deterioration was in the form of sealant that had flaked away across the surface in two areas approximately the size of a coin.

40. The regulations at Special Permit Condition II.E.1 and 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R.264.193(e)(1)(ii) require that tank systems that store hazardous waste to have an external liner system (secondary containment) that is free of cracks and gaps.

41. During the May 2012 inspection, the inspector collected information showing that the containment area for Tank 13 had a small gap between the floor and the vertical wall on the south end of the Tank 13 containment area. There was also a small crack in the floor on the west central side.

42. The concrete pad described in paragraph 41 was underlain by an impervious HDPE liner, which at the time of the inspection was not required by the permit.

43. Tank 13 contained liquid hazardous waste stored prior to use as a kiln fuel.

44. The waste listed in the Paragraph above is a "solid waste" and also a "hazardous

waste.”

45. The failure to ensure that the secondary containment for containers was free of cracks and gaps is a violation of Special Permit Condition I.H.1 and 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R.264.175(b)(1).

46. The failure to ensure that the secondary containment systems for tanks was free of cracks and gaps is a violation of Special Permit Condition II.E.1 and 10 C.S.R. 25-7.264(1), incorporating by reference 40 C.F.R.264.193(e)(1)(ii).

CONSENT AGREEMENT

1. Respondents and EPA agree to the terms of this CAFO and Respondents agree to comply with the terms of the Final Order portion of this CAFO. The terms of this CAFO shall not be modified except by a subsequent written agreement between the parties.

2. Respondents admit the jurisdictional allegations of this CAFO and agree not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

3. Respondents neither admit nor deny the specific factual allegations set forth in this CAFO, but agree to settle all claims alleged by Complainant under the terms set forth herein without further cost or delay solely in order to resolve this matter amicably without the expense of litigation.

4. Respondents waive the right to contest the allegations of fact and law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

5. Respondents and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys’ fees.

6. This CAFO addresses and fully and finally resolves all civil administrative claims for the RCRA violations alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA and its implementing regulations or any other applicable law.

7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondents’ obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. The undersigned representatives of Respondents certify that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

10. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

11. Respondents certify by the signing of this CAFO that, to the best of Respondents' knowledge, it is presently in compliance with all requirements of Subchapter III of RCRA (Hazardous Waste Management).

12. Respondents agree that, in settlement of the claims alleged in this CAFO, Respondents shall collectively pay a total penalty of Sixteen Thousand Eight Hundred Dollars and No Cents (\$16,800.00) as set forth in Paragraph 1 of the Final Order.

13. The effect of the settlement described in Paragraph 12 above is conditioned upon the accuracy of the Respondents' representations to EPA, memorialized in Paragraph 11 above.

14. This CAFO shall remain in full force and effect until Complainant provides Respondents with written notice, in accordance with Paragraph 6 of the Final Order portion of the CAFO, that all requirements hereunder have been satisfied.

Reservation of Rights

15. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-seven Thousand Five Hundred Dollars (\$37,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

16. Complainant reserves the right to take enforcement action against Respondents to enforce the terms and conditions of this CAFO.

17. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

18. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid

waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

19. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

20. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

21. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate

Effective Date

22. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondents shall pay a civil penalty of \$16,800.00. Such payment shall identify Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

And:

Demetra O. Salisbury
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CAFO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

- a) Beginning within 90 days of the effective date of the Final Order and for the period of one year, Respondent shall submit to EPA, a quarterly report (including photographs, copies of pertinent inspections and work orders) demonstrating:
- 1) All roll-off containers are in good condition, closed, labeled, and dated. The report should cover the first and fifteenth day of each month (or the closest business day) during the quarter and include pictures of proper container management of 25% of the containers in use.
 - 2) The secondary containment in all container and tank storage areas are in good condition.

- b) Respondents shall submit to EPA, within 30 days after the effective date of this CAFO, a Standard Operating Procedure detailing a system of inspections to ensure the container management areas and tank areas are maintained in good condition.
 - c) Respondents shall submit to EPA, within 30 days after the effective date of this CAFO, a Standard Operating Procedure detailing a system of training to ensure the container management areas and tank areas are maintained in good condition.
5. All documents required to be submitted by this CAFO shall be sent to the attention of:

Edwin G. Buckner, PE
Environmental Engineer
U.S. Environmental Protection Agency, Region 7
AWMD/WEMM
11201 Renner Boulevard
Lenexa, Kansas 66219.

6. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondents have fully implemented the actions required in the Final Order.

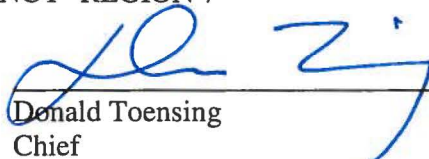
Parties Bound

7. The Final Order portion of this CAFO shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this CAFO.

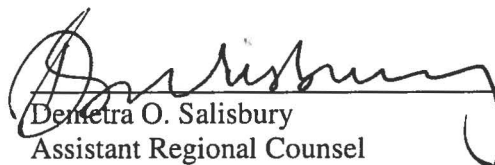
FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY- REGION 7

5-5-14
Date


Donald Toensing
Chief
Waste Enforcement and Materials
Management Branch
Air and Waste Management Division

4/30/14
Date


Demetra O. Salisbury
Assistant Regional Counsel

FOR RESPONDENT:

CONTINENTAL CEMENT COMPANY,
LLC

4/15/2014
Date

Thomas A. Beck
Signature

Printed Name THOMAS A. BECK

Title PRESIDENT

GREEN AMERICA RECYCLING, LLC.

4/15/2014
Date

Gregory G. Haug
Signature

Printed Name GREGORY G. HAUG

Title GEN MGR

ARMSTRONG TEASDALE LLP

BY: 

Julie O'Keefe
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
314.621.5070
314.621.5065 (facsimile)
jokeefe@armstrongteasdale.com

ATTORNEYS FOR RESPONDENTS

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional
Judicial Officer.

May 13, 2014
Date

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

IN THE MATTER OF Continental Cement Company, L.L.C. and Green America Recycling,
L.L.C., Respondent
Docket No. RCRA-07-2013-0031

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

salisbury.demetra@epa.gov

Copy by First Class Mail to Respondent:

Julie O'Keefe
Armstrong Teasdale, LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105

Dated: 5/13/14



Kathy Robinson
Hearing Clerk, Region 7