



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

JAN 25 2017

REPLY TO THE ATTENTION OF:

VIA EMAIL

Mr. Todd Richards
EES Coke Battery, L.L.C.
1400 Zug Island Road
River Rouge, Michigan 48218

Re: Consent Agreement and Final Order
EES Coke Battery, L.L.C.
Docket No: RCRA-05-2017-0005

Dear Mr. Richards:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed with the Regional Hearing Clerk on January 25, 2017.

Please pay the civil penalty in the amount of \$45,261 in the manner prescribed in paragraph 52 of the CAFO, and reference all checks with the docket number RCRA-05-2017-0005. The payment is due within 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,

A handwritten signature in cursive script that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Jack Schinderle, MDEQ (schinderlej@michigan.gov)
John Craig, MDEQ (craigj@michigan.gov)
Lonnie Lee, MDEQ (leel@michigan.gov)

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

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

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

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

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

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

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

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2017-0005
)	
EES Coke Battery, L.L.C.)	Proceeding to Commence and Conclude
1400 Zug Island Road)	an Action to Assess a Civil Penalty
River Rouge, Michigan)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID #: MIK498855683)	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 Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is EES Coke Battery, L.L.C., a limited liability company doing business in the State of Michigan.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies to the best of its knowledge that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, 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 Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 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 \$27,500 per day for each violation of Subtitle C of RCRA that occurred after January 30, 1997 through March 15, 2004, \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009 through November 2, 2015, and \$93,750 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, and was assessed on or after August 1, 2016.

Factual Allegations and Alleged Violations

17. Respondent was and is a “person” as defined by MAC R. 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is the “owner” or “operator,” as those terms are defined under MAC R. 299.9106(f) and (g) and 40 C.F.R. § 260.10, of a facility located at 1400 Zug Road, River Rouge, Michigan 48209 (facility).

19. The facility consists of land and structures, other appurtenances, improvements on the land, and equipment used for the production of coke and coke by-products.

20. Respondent’s facility is a “facility,” as that term is defined under MAC R. 299.9103(r) and 40 C.F.R. 260.10.

21. Respondent’s processes at the facility produce hazardous wastes identified or listed in MAC R. 299.9201-9230 or cause hazardous wastes to become subject to regulation under MAC 299.9101-299.11107 [40 C.F.R. Parts 260-270].

22. The hazardous wastes generated by Respondent’s processes include, but are not limited to, EPA hazardous waste numbers D001, D018, K087, and K141-K144.

23. Respondent is a “generator,” as that term is defined in MAC R. 299.9104(a) and 40 C.F.R. § 260.10.

24. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month prior to the inspections, i.e., was a (“large quantity generator”).

25. On March 11-12, 2014 and March 17-19, 2015, U.S. EPA inspected the facility to determine Respondent’s compliance with RCRA.

26. On November 18, 2015, EPA sent Respondent a notice of violation (NOV) identifying potential violations of RCRA.

27. On December 23, 2015, Respondent submitted a response to EPA’s NOV.

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

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

30. At all times relevant to this CAFO, Respondent was not authorized to operate with interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), for the treatment, storage, or disposal of hazardous waste at the facility.

Count 1 – Storage of Hazardous Waste without a License or Interim Status

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

32. Pursuant to Section 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 license is prohibited.

33. Pursuant to MAC R. 299.9306 and 40 C.F.R. § 262.34(a), and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a license or interim status, provided that the generator complies with all applicable conditions of MAC R 299.9306 and 40 C.F.R. § 262.34(a).

34. If the conditions of MAC R. 299.9306 and 40 C.F.R. § 262.34 are not met, then the generator must apply for an operating license under MAC R. 299.9502, 299.9508, 299.9510; [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

35. At the time of the March 11, 2014 inspection, Respondent was storing two 55-gallon drums of hazardous waste at its facility that were dated November 6, 2013 and December

11, 2013. The drums of hazardous waste had been on site for 125 days and 90 days, respectively. By the time these hazardous waste drums were removed from the facility on April 11, 2014, the drums had been stored at the facility for 156 days and 121 days, respectively.

36. By storing hazardous waste for greater than 90 days without a license or interim status, Respondent failed to meet the license exemption condition at MAC R. 299.9306(1) [40 C.F.R. § 262.34(a)].

37. The license exemption condition at MAC R. 299.9306(1)(b) [40 C.F.R. § 262.34(a)(2)] requires that a large quantity generator of hazardous waste mark each container holding hazardous waste with the date upon which each period of accumulation begins.

38. At the time of the March 11, 2014 inspection, Respondent had not marked five 55-gallon drums of hazardous waste with the date when each accumulation period began.

39. On April 15, 2014, Respondent informed EPA that the five drums were labeled with the date accumulation began during the March 11, 2014 inspection.

40. By failing to properly date its containers of hazardous waste, Respondent failed to meet the license exemption condition at MAC R. 299.9306(1)(b) [40 C.F.R. § 262.34(a)(2)].

41. The license exemption condition at MAC R. 299.9306(1)(b) and (c) [40 C.F.R. § 262.34(a)(3)] requires that a large quantity generator of hazardous waste label or clearly mark each container of hazardous waste with the words "Hazardous Waste" and the hazardous waste number(s) or code(s) associated with the waste.

42. At the time of the March 11, 2014 inspection, Respondent had not marked or clearly labeled four roll-off containers of hazardous waste with the words "Hazardous Waste" or the appropriate hazardous waste number(s) or code(s).

43. On April 15, 2014, Respondent informed EPA that the roll-off containers had been

properly labeled.

44. By failing to properly mark or label its containers of hazardous waste, Respondent failed to meet the license exemption condition at MAC R. 299.9306(1)(b) and (c) [40 C.F.R. § 262.34(a)(3)].

45. As set forth above, Respondent did not meet the conditions of MAC R. 299.9306 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a license 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 MAC R. 299.9502, 299.9508, 299.9510 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 2 – Failure to Operate Facility to Minimize Releases of Hazardous Waste

46. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

47. In order for a large quantity generator of hazardous waste to maintain its exemption from the requirement to obtain interim status or to apply for and obtain a hazardous waste operating license, it must comply with certain preparedness and prevention requirements in MAC R. 299.9306(1)(d) [40 C.F.R. Part 265, Subpart C], as required by MAC R. 299.9306 [40 C.F.R. § 262.34].

48. MAC R. 299.9306(1)(d) [40 C.F.R. §§ 262.34(a)(4) and 265.31] requires that a large quantity generator of hazardous waste must maintain and operate their facility 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.

49. At the time of the 2014 and 2015 inspections, hazardous waste decanter tank tar sludge was observed on the ground inside and outside the secondary containment structures in the coke by-products processing area. Hazardous waste coal tar processing residues were also observed on the ground in the coke by-products processing area.

50. By failing to operate its facility in a way that minimizes the release of hazardous waste, Respondent violated the requirement at MAC R. 299.9306(1)(d) [40 C.F.R. § 265.31].

Civil Penalty

51. 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 \$45,261. In determining the penalty amount, Complainant took into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,261 civil penalty for the RCRA violations by:

a. Sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

(i) For checks sent by regular U.S. Postal Service mail:

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

(ii) 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

The check must state "*In the Matter of: EES Coke Battery, L.L.C.*" and the docket number of this CAFO.

- b. Or 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"

In the comment or description field of the electronic funds transfer, state "*In the Matter of: EES Coke Battery, L.L.C.*" and the docket number of this CAFO.

- c. Or 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

- d. Or by on line payment and following the instructions found here:

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

53. If Respondent is paying by check, a transmittal letter stating Respondent's name, the case title ("*In the Matter of: EES Coke Battery, L.L.C.*") and the case docket number must

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

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

Brian Kennedy, Environmental Engineer
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd. (LR-8J)
Chicago, IL 60604

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

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

55. 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.

56. 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

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

58. 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.

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

60. 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).

61. This CAFO binds Respondent, its successors, and assigns.

62. 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.

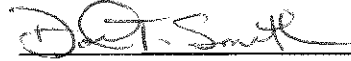
63. Each party agrees to bear its own costs and attorney's fees in this action.

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

65. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and todd.richards@dteenergy.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

EES Coke Battery, L.L.C., Respondent

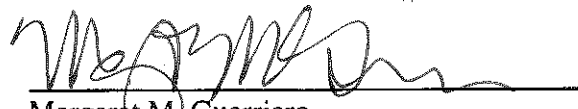
1/10/17
Date



David Smith
Vice-President
EES Coke Battery, L.L.C.

United States Environmental Protection Agency, Complainant

1/24/2017
Date



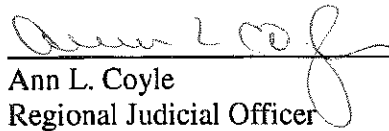
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
EES Coke Battery, L.L.C.
Docket No. RCRA-05-2017-0005

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.

January 24, 2017
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: EES Coke Battery, L.L.C.
Docket Number: **RCRA-05-2017-0005**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2017-0005**, which was filed on *January 25, 2017*, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Mr. Todd Richards
todd.richards@dteenergy.com

Copy by E-mail to
Attorney for Complainant:

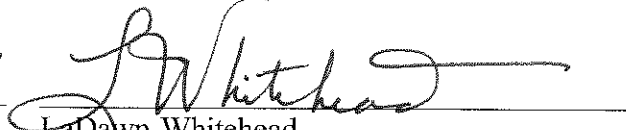
Robert H. Smith
smith.roberth@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

January 25, 2017


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5