

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2009-4008(b)
	)	
Bway Corporation	)	Proceeding under Section 3008(a)
1601 Valdosta Highway	)	of the Resource Conservation and
Homerville, GA 31634	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: GAD004060968	)	
	)	
Respondent.	)	

---

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.*, and the Georgia Hazardous Waste Management Act (GHWMA), 12-8-60 through § 12-8-83, of the Official Code of Georgia Annotated (OCGA). This action seeks civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and GHWMA and regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Parts 260 through 270 and 273, and the Georgia Hazardous Waste Management Rules (GHWMR) at Chapter 391-3-11 of the Georgia Department of Natural Resources Rules.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred solely for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

RECEIVED  
EPA REGION 4  
2009 MAR 30 AM 7:55  
RECORDS SECTION

## **II. THE PARTIES**

4. Complainant is the Chief, RCRA & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Bway Corporation, incorporated in the State of Delaware and operating in the State of Georgia. The facility is located at 1601 Valdosta Highway in Homerville, Georgia, 31634.

## **III. PRELIMINARY STATEMENTS**

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 21, 1984, the State of Georgia (the State) received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in the GHWMA, § 12-8-60 through § 12-8-83, and regulations set forth at Chapter 391-3-11 of the GHWMR. For purposes of this Order, citations herein to the requirements of RCRA shall constitute a citation to the equivalent requirements of the GHWMA and citations herein to the requirements of 40 C.F.R. Parts 124 and 260 through 268, and Parts 270 and 273 shall constitute a citation to the equivalent requirements of the GHWMR. The use of the 40 C.F.R. citations is also appropriate since the GHWMR incorporated by reference the requirements of 40 C.F.R. Parts 124 and 260 through 268, and Parts 270 and 273.
7. Although EPA has granted the State of Georgia authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State of Georgia.
8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Georgia before issuance of this CA/FO.
9. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and Section 12-8-66 of the GHWMA authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262 (Section 391-3-11-.08 of the GHWMR).
10. Section 3004 of RCRA, 42 U.S.C. § 6922, and GHWMA, § 12-8-60 through § 12-8-83, set forth standards applicable to generators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at 40 C.F.R. Part 264 and Chapter 391-3-11 of the GHWMR.
11. Section 3005 of RCRA, 42 U.S.C. § 6925, and GHWMA, § 12-8-60 through § 12-8-83, set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 40 C.F.R. Parts 264 (permitted) and 265 (interim status) and Chapter 391-3-11 of the GHWMR.

12. Pursuant to 40 C.F.R. § 261.2 and Chapter 391-3-11 of the GHWMR, a "solid waste" is any discarded material that is not otherwise excluded by regulation.
13. Pursuant to 40 C.F.R. § 261.3 and Chapter 391-3-11 of the GHWMR, a solid waste is a "hazardous waste" if it meets any of the criteria set out in this section and is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and Chapter 391-3-11 of the GHWMR.
14. Pursuant to 40 C.F.R. § 260.10 (Section 391-3-11-.02 of the GHWMR), a "generator" is any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to be subject to regulation.
15. Pursuant to 40 C.F.R. § 262.11, (Section 391-3-11-.08 of the GHWMR), a generator who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.
16. Pursuant to 40 C.F.R. § 262.34(c)(1), (Section 391-3-11-.08 of the GHWMR), a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided he meets the requirements of this section, including marking his containers with the words "Hazardous Waste" or with other words that identify the contents of the container.
17. Pursuant to 40 C.F.R. 40 C.F.R. § 262.34(a)(2) & (3) (Section 391-3-11-.08 of the GHWMR), respectively, a generator must label containers accumulating hazardous wastes, for up to 90 days, with an accumulation start date and the words "Hazardous Waste."
18. Pursuant to 40 C.F.R. § 265.173(a), which is referenced in 40 C.F.R. § 262.34(a)(1)(i) (Section 391-3-11-.08 of the GHWMR), a generator must keep all containers managing hazardous waste closed when hazardous waste is not being added or removed from the containers.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

19. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
20. Respondent is the "owner" and "operator" of a "facility" located at 1601 Valdosta Highway, Homerville, Georgia, as those terms are defined in 40 C.F.R. § 260.10.
21. On April 11, 2008, a representative of EPA performed a RCRA compliance evaluation inspection (CEI) of Respondent's facility.
22. On September 7, 2008, representatives of EPA collected representative samples of paint wastes observed at Respondent's facility during the April 11, 2008, CEI. Analysis of the samples determined the paint wastes to be ignitable hazardous wastes (D001).

23. On July 23, 2008, EPA issued a Notice of Violation (NOV) to Respondent identifying alleged violations of RCRA that EPA noted during the CEI.
24. Respondent, as a result of operations at its facility, is a generator of hazardous waste.
25. At the time of the CEI, Respondent had not made a hazardous waste determination on certain paint wastes generated at its facility.
26. EPA therefore alleges that Respondent violated 40 C.F.R. § 262.11 (Section 391-3-11-.08 of the GHWMR), by failing to make a hazardous waste determination on paint wastes generated at its facility.
27. At the time of the CEI, Respondent had not labeled all containers accumulating hazardous paint wastes with accumulation start dates and with the words "Hazardous Waste."
28. EPA also alleges that Respondent violated 40 C.F.R. § 262.34(a)(2) & (3) (Section 391-3-11-.08 of the GHWMR), respectively, for failing to label containers accumulating hazardous wastes, for up to 90 days, with an accumulation start date and the words "Hazardous Waste."
29. At the time of the CEI, Respondent was not managing all of its hazardous paint wastes in closed containers.
30. EPA also alleges that Respondent violated 40 C.F.R. § 265.173(a), which is referenced in 40 C.F.R. § 262.34(a)(1)(i) (Section 391-3-11-.08 of the GHWMR), for failing to keep all containers managing hazardous waste closed when hazardous waste is not being added or removed from the containers.
31. At the time of the CEI, Respondent had not labeled all containers managing up to 55 gallons of hazardous paint wastes with the words "Hazardous Waste" or with words which identify the contents of the container.
32. EPA also alleges that Respondent violated 40 C.F.R. § 262.34(c)(1), (Section 391-3-11-.08 of the GHWMR), by accumulating as much as 55 gallons of hazardous waste in containers at or near the point of generation without marking his containers with the words "Hazardous Waste" or with other words that identify the contents of the container.

#### **V. TERMS OF AGREEMENT**

Based on the foregoing Allegations and Determinations, the parties agree to the following:

33. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
34. The Respondent neither admits nor denies the factual allegations or alleged violations set out in this CA/FO.

35. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
36. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
37. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
38. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
39. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO which include all the violations identified during the CEI and in the NOV.
40. Respondent, by signing this CA/FO, certifies that all violations identified in the NOV and alleged in this CA/FO have been corrected.
41. Each party will pay its own costs and attorney's fees.

#### **VI. PAYMENT OF CIVIL PENALTY**

42. Respondent consents to the payment of a civil penalty in the amount of TWO HUNDRED TWO THOUSAND, EIGHTY THREE DOLLARS (\$202,083) within thirty (30) calendar days of the effective date of this CA/FO.
43. Payment shall be made by check with good and sufficient funds, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

**U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028**

**If paying by EFT, the Respondent shall transfer the payment to:**

**Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"**

**If paying by ACH, the Respondent shall remit payment to:**

**PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 – checking  
Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington, DC 20074  
Contact: Jesse White, 301-887-6548**

**Respondent shall submit a copy of the payment to the following addressees:**

**Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960**

**and to:**

**Frank Ney, Acting Chief  
South Enforcement & Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960**

44. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) **Interest.** Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
  - (b) **Monthly Handling Charge.** Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
  - (c) **Non-Payment Penalty.** On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
45. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

#### **VII. PARTIES BOUND**

46. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
47. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
48. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

#### **VIII. RESERVATION OF RIGHTS**

49. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory

authority, should the EPA find that the 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 or the environment.

50. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
51. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the 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.
52. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

#### **IX. OTHER APPLICABLE LAWS**

53. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **X. SERVICE OF DOCUMENTS**

54. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Mita Ghosh, Chief  
Office of RCRA, OPA and UST Legal Support  
OEA – 13<sup>th</sup> Floor  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9568

55. A copy of any documents that Complainant files in this action shall be sent to the following attorney who represents the Respondent in this matter and who is authorized to receive service for the Respondent in this proceeding:

56. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

## **XII. EFFECTIVE DATE**

57. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

### **AGREED AND CONSENTED TO:**

#### **Bway Corporation**

By: Ray Horner  
Ray Horner  
Plant Manager

Dated: 3/17/09

#### **U.S. Environmental Protection Agency**

By: Caroline Y. F. Robinson  
Caroline Y. F. Robinson, Chief  
RCRA & OPA Enforcement & Compliance Branch  
RCRA Division

Dated: 3/25/09

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	Docket Number: RCRA-04-2009-4008(b)
	)	
Bway Corporation	)	Proceeding under Section 3008(a)
1601 Valdosta Highway	)	of the Resource Conservation and
Homerville, Georgia 31634	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: GAD004060968	)	
	)	
Respondent.	)	
<hr/>		)

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 27<sup>th</sup> day of March, 2009.

BY: J. Scott Gilh  
A. Stanley Meiburg  
Acting Regional Administrator  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Bway Corporation, Docket Number: RCRA-04-2009-4008 (b), on MAR 30 2009 2009, and on MAR 30 2009 2009, served the parties listed below in the manner indicated:

Mita Ghosh, Chief (Via EPA's internal mail)  
Office of RCRA, OPA and UST Legal Support  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Mr. William J. Sheppard  
Attorney at Law  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, Georgia 30326-1044

(Via Certified Mail- Return Receipt Requested)

Date: 3-30-09



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511