

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

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HEARING CLERK

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2008-4008  
)  
FBF Nuclear Container, LLC )  
) Proceeding under Section 3008(a) of  
) the Resource Conservation and Recovery  
) Act, 42 U.S.C. § 6928(a)  
)  
Respondent. )  
\_\_\_\_\_ )

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. The United States Environmental Protection Agency (EPA) issued a Complaint and Compliance Order (Complaint) to FBF Nuclear Container, LLC, on July 1, 2008, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* found at 40 Code of Federal Regulations (C.F.R.) Part 22. Complainant is the Chief, RCRA/OPA Enforcement and Compliance Branch, RCRA Division, EPA, Region 4. Respondent is FBF Nuclear Container Company, LLC.
2. Complainant and Respondent have conferred for the purposes 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, Complainant and Respondent have agreed to the execution of this Consent Agreement and attached Final Order (CA/FO). Respondent hereby agrees to comply with the terms of this CA/FO.

**II. PRELIMINARY STATEMENTS**

3. Respondent has been served with a copy of the Complaint and Notice of Opportunity for Hearing in this matter.
4. The Respondent is FBF Nuclear Container, LLC (hereinafter Respondent), a company organized under the laws of the state of Ohio and, at all times relevant to this Order, was doing business in Tennessee at a facility located at 115 Franklin Road, Oak Ridge,

Tennessee 37830 (Facility). Respondent is a “person” as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. 260.10].

5. On April 14, 2005, representatives of the Tennessee Department of Environment and Conservation (TDEC) conducted a compliance evaluation inspection at the Facility to determine Respondent’s compliance with RCRA. During that inspection, alleged violations were detected.
6. In its Complaint, Complainant alleged that Respondent: (1) failed to make hazardous waste determinations in violation of TDEC Rule 1200-1-11-.03(1)(b) [40 C.F.R. § 262.11]; (2) failed to manage its containers with proper markings and closing containers in violation of TDEC Rule 1200-1-11-.03(4)(e)5 & TDEC Rule 1200-1-11-.05(9)(d)1 [40 C.F.R. § 262.34(c)(1) & 40 C.F.R. § 265.173]; (3) failed to mark containers with the accumulation start dates in violation of TDEC Rule 1200-1-11-.03(4)(e)6(iv)(I) [40 C.F.R. § 262.34 (a)(2)]; (4) failed to label or mark hazardous waste containers in accumulation with words, “Hazardous Waste” in violation of TDEC Rule 1200-1-11-.03(4)(e)6(v) [40 C.F.R. § 262.11]; (5) failed to equip the facility’s storage area with fire extinguishers and spill control equipment in violation of TDEC Rule 1200-1-11-.05(3)(c)3 [40 C.F.R. § 265.32]; (6) failed to equip emergency communication devices at the facility in violation of TDEC Rule 1200-1-11-.05(3)(e)1 [40 C.F.R. § 265.34]; (7) failed to designate an emergency coordinator in violation of TDEC Rule 1200-1-11-.03(4)(e)6(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)]; (8) failed to post emergency information next to the telephone in violation of TDEC Rule 1200-1-11-.03(4)(e)6(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)]; (9) failed to train employees with proper hazardous waste training where required in violation of TDEC Rule 1200-1-11-.03(4)(e)6(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)]; and, (10) failed to conduct weekly inspections of the <180-day storage area in violation of TDEC Rule 1200-1-11-.05(9)(e) [40 C.F.R. § 265.174].
7. Respondent corrected the alleged violations at its Facility after it shipped all its hazardous waste to an approved treatment, storage or disposal facility. After such shipment, Respondent did not operate as Small Quantity Generator (SQG) or Large Quantity Generator (LQG) of hazardous waste. In July 2005, Respondent ceased operation of business at the Facility and since that date, while still maintaining its corporate existence, has not operated any business at any location.
8. For all purposes of this CA/FO, Respondent admits the jurisdictional allegations of the Complaint in this matter pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
9. Respondent neither admits nor denies the factual allegations contained in the Complaint.
10. As part of this settlement, Respondent waives its right to a hearing on the allegations in the Complaint and, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations in the Complaint, and its right to appeal this CA/FO.

11. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent consents to the conditions specified in this CA/FO with regard to payment of a civil penalty.
12. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in the Complaint on the basis of any issue related to the Paperwork Reduction Act.
13. Pursuant to Section 3008(a) of RCRA, the nature of the violations, Respondent's demonstrated inability to pay a penalty and other relevant factors, EPA has determined the appropriate civil penalty to settle this action is FIFTEEN HUNDRED DOLLARS (\$1,500).
14. Respondent consents to the issuance of the Final Order and consents for the purposes of settlement to the assessment and payment of the civil penalty cited in the foregoing paragraph.
15. The parties agree that settlement of this matter is in the public interest and that this CA/FO satisfies the applicable requirements of RCRA. The parties also agree that compliance with the terms of this CA/FO resolves the violations of RCRA alleged in the Complaint.

### **III. PARTIES BOUND**

16. This CA/FO shall apply to and be binding upon the Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, and agents, and all persons, including independent contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
17. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to this CA/FO.

### **IV. PAYMENT OF CIVIL PENALTY**

18. Respondent consents and agrees to the payment of a civil penalty in the total amount of FIFTEEN HUNDRED DOLLARS (\$1,500), payable within thirty (30) calendar days after the effective date of this CA/FO.

Respondent shall make payment of the penalty by cashier's check or certified check, made payable to: **Treasurer, United States of America**. Respondent shall reference the facility name and the docket number for this matter on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

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

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

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

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and then open the form and complete the required fields.

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York as follows:

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."

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:

Doug McCurry, Chief  
North Enforcement & Compliance Section  
RCRA/OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

19. 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 90 calendar days past due, Respondent must pay a non-payment penalty of six percent 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).

#### **V. RESERVATION OF RIGHTS**

20. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.
21. Except as expressly provided herein, nothing in this CA/FO 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 the Facility.

22. Notwithstanding any other provisions of the CA/FO, 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, disposal or transportation of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to human health and the environment.

#### **VI. OTHER TERMS**

23. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
24. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
25. The provisions of this CA/FO shall be deemed satisfied once Respondent pays the penalty as required in the Final Order.
26. Each party shall bear its own costs and attorney's fees.

#### **VII. EFFECTIVE DATE**

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

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

**FBF Nuclear Container, LLC,**

By:  Dated: 5.20.2009  
Name: M. DAVID BERGER (Typed or Printed)  
Title: Member (Typed or Printed)

By:  Dated: 5/21/09  
Caroline Y.F. Robinson, Chief  
RCRA/OPA Enforcement and Compliance Branch  
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2008-4008  
)  
FBF Nuclear Container, LLC )  
) Proceeding under Section 3008(a) of  
) the Resource Conservation and Recovery  
) Act, 42 U.S.C. § 6928(a)  
Respondent. )  
\_\_\_\_\_ )

**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 26 day of May, 2009.

BY:   
A. Stanley Meiburg  
Acting Regional Administrator

In the Matter of FBF Nuclear Container, LLC,  
Docket Number: RCRA-04-2008-4008

**CERTIFICATE OF SERVICE**

I hereby certify that on MAY 27, 2009, I filed the foregoing  
Consent Agreement and the attached Final Order (CA/FO), in the Matter of FBF Nuclear  
Container, LLC, Docket Number: RCRA-04-2008-4008, and that on MAY 27 2009,

I served a true and correct copy of the CA/FO on the parties listed below in the manner  
indicated:

Honorable Susan B. Schub  
Regional Judicial Officer  
U.S. EPA – Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via Hand Delivery)

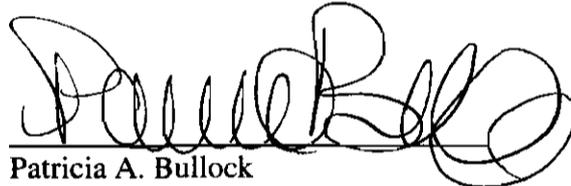
Michael T. Newton  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Brian M. Babb, Esq.  
David A. Meyer, Esq.  
Keating Muething & Klekamp PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202

(Regular Mail)

Date 5-27-09



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