



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

SEP 30 2010

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL 7009 1680 00007665 2506
RETURN RECEIPT REQUESTED

Mr. Donald J. Laipple
Executive Vice President and General Manager
Rieke Packaging Systems
500 West Seventh Street
Auburn, Indiana 46706

Re: Consent Agreement and Final Order
Rieke Packaging Systems
EPA ID. NO.: IND 005 161 377
Docket No.: RCRA-05-2010- 0025

Dear Mr. Laipple:

Please find enclosed a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on September 30, 2010 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$16,000 in the manner prescribed in paragraph 62 of the CAFO, and reference all checks with the number BD 2751042R018 and docket number RCRA-05-2010- 0025. Also, enclosed is a *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*. Your payment is due within 30 days of the effective date of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

Paul J. Little
Acting Chief, RCRA Branch
Land and Chemicals Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Rieke Corporation)
)
500 West Seventh Street)
Auburn, Indiana 46706)
U.S. EPA ID No.: IND 005 161 377)
)
Respondent.)
_____)

Docket No. RCRA-05-2010-0025
**Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)**

RECEIVED
SEP 30 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Reike Corporation, a corporation doing business in the State of Indiana.
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 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 or used oil, pursuant to Sections 3001 – 3007, and 3013, and 3014, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934, and 6935.

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 Indiana 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. 3953 (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. 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

16. Respondent was at all times relevant to this CAFO a corporation incorporated under the laws of Indiana and whose registered agent is Corporation Service Company, 251 East Ohio Street, Suite 500, Indianapolis, Indiana 46204.
17. Respondent was and is a "person" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-1(b), 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 329 IAC 3.1-4-1 and 40 C.F.R. § 260.10, of a facility located at 500 West Seventh Street, Auburn, Indiana (facility).
19. On or about March 1, 1990, the Facility was assigned U.S. EPA Identification Number IND005161377.
20. The facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.
21. Respondent manufactures packaging products and packaging dispensers.
22. At all times relevant to this CAFO, Respondent created solid wastes including waste paint and waste solvent.
23. Respondent's processes at the facility produce several hazardous wastes identified or listed in IAC §§ 3.1-6-1 and 3.1-6-2 or cause a hazardous waste to become subject to regulation under 329 IAC Article 3.1 [40 C.F.R. Parts 260-270].
24. Respondent is a "generator," as that term is defined at 329 IAC §§ 3.1-4-1 and 3.1-4-1(b) [40 C.F.R. § 260.10].
25. 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.

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

27. At all times relevant to this CAFO, neither the State of Indiana nor U.S. EPA has issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

28. A large quantity generator may, for 90 days or less, accumulate and/or conduct treatment of hazardous waste that is generated on-site without an Indiana hazardous waste management permit, provided that the generator complies with the conditions of 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34].

29. At all times relevant to this CAFO, Respondent generated waste oil at the facility, as defined in 329 IAC §§ 13-2-9, 13-2-19 and 13-2-24 [40 C.F.R. §279.20].

30. On April 22, 2008 U.S. EPA conducted a compliance evaluation inspection (CEI) of the facility.

31. During the CEI on April 22, 2008, Respondent allowed the U.S. EPA inspector to observe plant operations related to the handling of hazardous waste and used oil and review records at the facility.

32. During the CEI on April 22, 2008, the U.S. EPA inspector noted that the Respondent did not have a hazardous waste storage permit issued by the State of Indiana or the U.S. EPA.

**COUNT 1 – Storage of Hazardous Waste Without a Permit by Failing to
Meet Generator Conditions**

33. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

34. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had not clearly marked at least five containers of hazardous waste in the Wastewater Treatment Area with the words, “Hazardous Waste” or with other words that identified the contents of the containers.

35. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had not marked and made visible the date upon which accumulation began on:

- a. two containers of hazardous waste in the Paint Mixing Room,
- b. two containers in the 90 Day Storage Area, and
- c. one container in the Mop Water Cleanout Area.

36. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had not closed containers holding hazardous waste except when it is necessary to add or remove waste, including:

- a. two containers in the Paint Mixing Room, and
- b. one container in the Mop Water Cleanout Area.

37. During the CEI on April 22, 2008, the U.S. EPA inspector observed that Respondent did not manage the open containers in the Paint Mixing Room and the container in the Mop Water Cleanout Area as satellite accumulation containers because the containers were not at or near the point of generation where the hazardous wastes were initially accumulated, nor were the containers under the control of the operator of the process generating the waste.

38. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had accumulated hazardous waste outside of a container, tank or drip pad, as specified below:

- a. hazardous waste on the top of one container in the Paint Mixing Room;
- b. hazardous waste on the floor and walls of the Paint Mixing Room;
- c. hazardous waste on the floors in the 90 Day Storage Area;
- d. hazardous waste in secondary containment skids in the 90 Day Storage Area; and
- e. hazardous waste on top of two containers in the 90 Day Storage Area;

39. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must ensure that the date, upon which each period of accumulation begins, is clearly marked and visible for inspection on each container of hazardous waste and while being accumulated on-site, each container of hazardous waste must be labeled or marked clearly with the words, "Hazardous Waste."

40. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must close each container holding hazardous waste except when it is necessary to add or remove waste.

41. Under 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], a generator of hazardous waste must store hazardous waste in containers, tanks or on drip pads.

42. As set forth above, if Respondent did not comply with the conditions of 329 IAC § 3.1-7-1 [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, then Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA,

42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1 through 3.1-13-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

**COUNT 2 – Failing to Comply with Facility Requirements for
Preparedness and Prevention**

43. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

44. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent did not maintain aisle space in the Paint Mixing Room and the 90 Day Storage Area to allow unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

45. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had failed to maintain the facility so as to minimize the possibility of 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 and environment as specified below:

- a. hazardous waste on the floor and walls of the Paint Mixing Room;
- b. hazardous waste on the floor and walls of the 90 Day Storage; and
- c. hazardous waste on the floor of the Mop Water Cleanout Area.

46. During the CEI on April 22, 2008, the U.S. EPA inspector noted that the Respondent was an LQG which had accumulated hazardous waste on-site for 90 days or less, and which did not meet the conditions for a hazardous waste permit exemption of 329 IAC § 3.1-7-1 [40 CFR § 262.34(a)].

47. An LQG which accumulates hazardous waste on-site for 90 days or less, and which does not meet the conditions for a hazardous waste permit exemption of 329 IAC § 3.1-7-1 [40 CFR § 262.34(a)], is an operator of a hazardous waste storage facility, and is required to obtain an Indiana hazardous waste storage permit. See 329 IAC §§ 3.1-13-1, 13-2(1)-(4), 13-3 to 3-17 [40 CFR §§ 270.1(c), 270.10(a) and (d)].

48. If the generator does not comply with the conditions of 329 IAC § 3.1-7-1 [40 C.F.R. § 262.34], then the generator must apply for an operating permit under See 329 IAC §§ 3.1-13-1, 13-2(1)-(4) and (6), 13-3 to 3-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

49. Under 329 IAC §§ 3.1-7-1 and 3.1-10-1 [40 CFR §§ 262.34 (a) (4) and 265.31] a generator of hazardous waste must maintain the facility so as to minimize the possibility of 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 and environment.

50. Under 329 IAC §§ 3.1-7-1 and 3.1-10-1 [40 CFR §§ 262.34(d) (4) and 265.35], a generator of hazardous waste must ensure that aisle space is maintained to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

51. As set forth above, if Respondent did not comply with 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, then Respondent stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1 through 3.1-13-17 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

COUNT 3 – Failure to Comply with Standards for the Management of Used Oil

52. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

53. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had not labeled or marked clearly nine containers used to store used oil located outside the 90 Day Storage Area adjacent to the UF Building with the words, “Used Oil.”

54. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent had not labeled or marked clearly four tanks used to store used oil located in the UF Building with the words, “Used Oil.”

55. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent was storing used oil outside of containers as specified below:

- a. on and in secondary containment pallets located in the 90 Day Storage Area;
- b. on the walls and floors of the 90 Day Storage Area;
- c. on and beneath the grates located in the 90 Day Storage Area;
- d. on the tops and sides of containers, as well as in pans, located in the 90 Day Storage;
- e. on the tops and sides of containers stored outside the 90 Day Storage Area adjacent to the UF Building; and
- f. on the interior floors and walls of the UF Building, as well as on the equipment and tanks located in the UF.

56. During the CEI on April 22, 2008, the U.S. EPA inspector observed that the Respondent disposed of used oil in the environment as specified below:

- a. on and in the soil and gravel immediately outside the 90 Day Storage Area adjacent to the UF;

- b. on the concrete immediately outside the 90 Day Storage Area adjacent to the UF; and
- c. on the exterior walls of the UF.

57. The gravel and soil area adjacent to the UF Building is not a waste pile subject to regulation under 40 CFR Parts 264 or 265.

58. Under 329 IAC § 13-4-3 [40 C.F.R. § 279.22 (a)], used oil generators shall not store used oil in units other than tanks and containers.

59. Under 329 IAC § 13-4-3 [40 C.F.R. § 279.22 (c) (1)], containers and tanks used to store used oil at generator facilities must be labeled or marked clearly with the words, "Used Oil."

60. Under 329 IAC § 13-3-3(a) [40 C.F.R. § 279.12 (a)], used oil generators shall not manage used oil in waste piles unless the units are subject to regulation under 40 CFR Parts 264 or 265.

61. Under 329 IAC 13-4-3(a) [40 C.F.R. §§ 279.22(d)], upon detection of a release of used oil to the environment not subject to the requirements of 40 CFR 280 Subpart F, which occurred after the effective date of Indiana's adoption of the recycled used oil management program rule, Respondent must perform the following cleanup steps:

- a. stop the release;
- b. contain the released used oil;
- c. cleanup and manage properly the released used oil and other materials;
and
- d. if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

Civil Penalty

62. 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 \$16,000. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

63. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,000.00 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

A copy of the check shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Mary Fulghum
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

Diane Sharrow
RCRA Branch
Land and Chemicals Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard (LR-8J)
Chicago, Illinois 60604-3590

64. A transmittal letter identifying this CAFO shall accompany the remittance and the copy of the check. The letter and check must state the case name, the docket number of this CAFO and the billing document number.

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

66. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 79 below, 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.

67. 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.

Supplemental Environmental Project

68. Respondent must complete a SEP designed to protect the environment and public health and prevent pollution by funding and ensuring the implementation of a used oil recovery SEP in conjunction with the Northeast Indiana Solid Waste Management District and Trine University (*See* the attached SEP dated August 13, 2010). The SEP will prevent used oil pollution in Northeast Indiana and at the Respondent's facility.

69. Respondent must spend at least \$80,307.00 to fund and implement the SEP.

70. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

71. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

72. Respondent must maintain for a period of three years after the SEP Completion Report is approved, copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

73. Respondent must submit a SEP Final Report by August 31, 2011.

74. In determining the costs associated with the implementation of the SEP and reported in the SEP Final Report, Respondent must exclude all costs necessary to assure compliance with statutory, regulatory, or permit requirements.

75. Respondent must submit all notices and reports required by this CAFO by first class mail to Diane Sharrow in Paragraph 63.

76. In each report that Respondent submits as provided by this CAFO, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information,

including the possibility of fines and imprisonment for knowing violations.

77. Following receipt of the SEP Final report described in Paragraph 75 above, U.S. EPA must notify Respondent in writing that: Respondent has satisfactorily completed the SEP and the SEP Final report; there are deficiencies in the SEP as completed or in a SEP report and U.S. EPA will give Respondent thirty days to correct the deficiencies; or Respondent has not satisfactorily completed the SEP or the SEP Final Report and U.S. EPA will seek stipulated penalties as specified in Paragraph 79 below.

78. If U.S. EPA determines that there are deficiencies in the SEP as completed or in a SEP report, and notifies Respondent that the deficiencies must be corrected in 30 days as provided above, Respondent may object in writing to the deficiency notice within ten days of its receipt. The parties will have thirty days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements to complete the SEP that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 79 below.

79. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of eighty thousand three hundred and seven dollars (\$80,307.00).

b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90

percent of the required amount on the SEP, Respondent will not be liable for any stipulated penalty.

c. If Respondent satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Respondent must pay a stipulated penalty of eight thousand and three dollars (\$8,003.00).

d. If Respondent failed to timely submit the SEP Final Report, Respondent must pay a stipulated penalty of \$200.00 for each day after the report was due until Respondent submits the report.

e. If Respondent failed to timely submit any other reports, Respondent must pay a stipulated penalty of \$100.00 for each day after the report was due until Respondent submits the report.

80. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

81. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 63 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

82. Any public statement that Respondent makes referring to the SEP must include the following language, "Rieke Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Rieke Corporation for violations of Section 3008(a) of RCRA and Indiana Administrative Code."

83. The attached SEP may be modified in writing by the Respondent and subject to the approval by U.S. EPA without amendment to this CAFO as necessary to ensure the effective implementation of this SEP.

V. FORCE MAJEURE

84. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:
- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
 - b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
 - c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.
 - d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

85. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

86. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

88. 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.

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

90. 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).

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

92. 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.

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

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


Rieke Corporation, Respondent

September 21, 2010
Date

Kevin A. Brooks
Name
President
Title

United States Environmental Protection Agency, Complainant

9/28/10
Date


Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

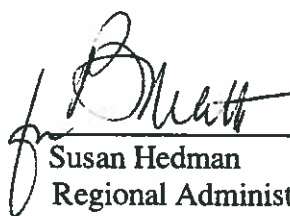
In the Matter of:
Rieke Corporation
Docket No. RCRA-05-2010-0025

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.

9-29-10

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
SEP 30 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**