



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 26 2018

REPLY TO THE ATTENTION OF:

VIA EMAIL

Mr. Ron Dana
Dana Transport, Inc.
13925 South Keeler Avenue
Crestwood, Illinois 60445

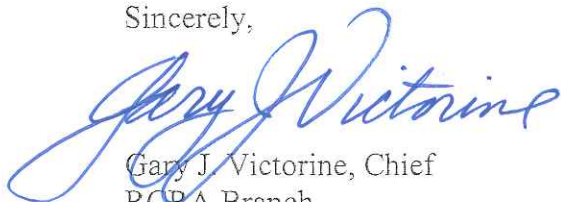
Re: Consent Agreement and Final Order
Dana Transport, Inc.
Docket No: RCRA-05-2018-0006

Dear Mr. Dana:

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 February 26, 2018.

Please pay the civil penalty in the amount of \$92,600 in the manner prescribed in paragraph 52 of the CAFO, and reference all checks with the docket number RCRA-05-2018-0006. The payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,


Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Todd Retting, Illinois EPA
(todd.reting@illinois.gov)
Daniel Bonanni, Dana Transport, Inc.
(dbonanni@danacompanies.com)
Dale Hirschfield, Dana Transport, Inc.
(dhirschfield@danacompanies.com)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No	RCRA-05-2018-0006
)		
Dana Transport, Inc.)	Proceeding to Assess a Civil Penalty	
Crestwood, Illinois)	Under Section 3008(a) of the Resource	
)	Conservation and Recovery Act,	
U.S. EPA ID No.: ILD981091861)	42 U.S.C. § 6928(a)	
)		
Respondent.)		

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. Respondent is Dana Transport, Inc., a corporation doing business in the State of Illinois.
4. U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
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.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

9. 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.

Statutory and Regulatory Background

10. 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 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, 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.

12. Any violation of regulations promulgated pursuant to Subtitle C 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.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the

federal government's base RCRA program effective June 30, 1989. 54 *Fed. Reg.* 27170 (June 28, 1989).

14. 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.

Factual Allegations

15. Respondent is a "person" as that term is defined under 35 IAC § 720.110, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "owner" or "operator," as those terms are defined under 35 IAC § 720.110 [40 C.F.R. § 260.10] of a facility located at 13925 South Keeler Avenue, Crestwood, Illinois.

17. Respondent's facility consists of land and structures, other appurtenances, and improvements on the land, portions of which are used for storing hazardous waste.

18. Respondent's facility constitutes a "facility," as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

19. Respondent's actions and processes at the facility cause the production of "hazardous waste," as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

20. Respondent is a "generator" of hazardous waste, as that term is defined under 35 IAC § 720.110 [40 C.F.R. § 260.10].

21. For all relevant periods, Respondent generated 1000 kilograms or greater of hazardous waste in a calendar month (qualifying it as a "Large Quantity Generator"), which it shipped off-site to a treatment, storage or disposal facility within the United States.

22. On May 10, 2017, U.S. EPA sent to Respondent a Notice of Potential RCRA

Violations and Opportunity for Settlement.

23. The Notice letter identified potential RCRA violations and areas of concern at the facility warranting an evaluation of RCRA compliance, and an option and timeline for resolution of the matter through a streamlined settlement process.

24. The goal of the streamlined settlement process is to quickly and efficiently assess and resolve the matter, bring the facility into compliance, and enter into an agreed upon CAFO.

25. Thereafter, Respondent engaged with U.S. EPA to assess and evaluate the facility's compliance, in part through voluntarily providing U.S. EPA all necessary information.

Alleged Violations

Count I: Operating as Storage Facility without a RCRA Permit or Interim Status

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

27. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925(a), the treatment, storage, or disposal of hazardous waste by any person without a RCRA permit or interim status is prohibited.

28. At all times relevant times, Respondent did not have a RCRA permit or interim status to treat, store, or dispose of hazardous waste at its facility.

29. Pursuant to 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)], applicable to Large Quantity Generators, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided it meets the conditions specified under 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)].

30. Pursuant to 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)], these conditions include the requirements for owners or operators under Subpart C of 35 IAC Part 725, entitled

“Preparedness and Prevention;” Subpart D of 35 IAC Part 725, entitled “Contingency Plan and Emergency Procedures;” 35 IAC § 725.116, entitled “Personnel Training;” and 35 IAC § 728.107(a)(5), relating to “Land Disposal Restrictions.” [Subparts C and D of 40 C.F.R. Part 265, 40 C.F.R. § 265.16, and 40 C.F.R. § 268.7(a)(5)].

31. Respondent failed to meet conditions specified below.

Contingency Plan

32. Pursuant to 35 IAC § 725.151(a) [40 C.F.R. § 265.51(a)] the owner or operator must have a contingency plan for the facility, designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

33. At all relevant times, Respondent did not have a contingency plan for the facility.

Personnel Training

34. Pursuant to 35 IAC § 725.116(a) and (c) [40 C.F.R. §256.16(a) and (c)] facility personnel must be trained to perform their duties in a way that ensures the facility's compliance with the requirements of this part, including implementation of the facility's contingency plan. Facility personnel must take part in an annual review of this training.

35. At all relevant times, Respondent's training program for the facility's personnel did not include training on implementation of the facility's contingency plan.

36. Respondent did not provide an annual review of this training to facility personnel in the years 2014 and 2015.

Count II: Annual Reporting

37. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

38. Pursuant to 35 IAC § 722.141, a generator that ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit an annual report to the Illinois EPA by March 1 for the preceding calendar year, regarding each shipment of hazardous waste shipped off-site, including for each shipment the type, quantity, transporter and receiving treatment, storage or disposal facility.

39. For all relevant years, Respondent did not prepare and submit an annual report to the Illinois EPA by March 1 for the preceding calendar year, in violation of 35 IAC § 722.141.

40. On or about September 6, 2017, Respondent submitted to Illinois EPA annual reports for the years 2013, 2014, 2015, and 2016.

Count III: Notification of Change of Hazardous Waste Activity

41. Complainant incorporates paragraphs I through 25 of this CAFO as though set forth in this paragraph.

42. Pursuant to 35 IAC § 722.110(b) [40 C.F.R. § 262.10(b)], a generator must determine the quantity of hazardous waste generated per month, so as to allow the generator to determine the applicability of the provisions of 35 IAC Part 722 [40 C.F.R Part 262] that are dependent on quantity generated per month.

43. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file with an authorized State a notification including (or if necessary a subsequent notification) the types of wastes handled and the type of hazardous waste activity (*e.g.*, change to Large Quantity Generator status).

44. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's hazardous waste activity changes to Large Quantity Generator status.

45. For all relevant years, Respondent did not submit a notification of the change of the facility's type of hazardous waste activity to Large Quantity Generator status, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

46. On or about June 22, 2017, Respondent filed EPA Form 8700-12 with Illinois EPA, providing notification of the facility's change in hazardous waste activity to the status of Large Quantity Generator.

Count IV: Recordkeeping Requirements for Land Disposal Restrictions

47. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

48. Pursuant to 35 IAC § 728.107(a)(8) [40 C.F.R. § 268.7(a)(8)], a generator must retain on-site copies of all notices, certifications, waste analysis data, and other documentation related to land disposal restrictions for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.

49. For all relevant years, Respondent did not have copies on-site of the land disposal restriction notification associated with its waste stream.

50. On or about August 25, 2017, Respondent obtained a copy of the land disposal restriction notification associated with its waste stream from an off-site treatment, storage and disposal facility.

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 \$92,600. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other

factors as justice may require. 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 \$92,600 civil penalty for the RCRA violations by:

For checks sent by regular U.S. Postal Service mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state Respondent's name and the docket number of this CAFO.

For checks sent by express mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CAFO.

For electronic funds transfer, sending funds electronically, payable to "Treasurer, United States of America," and to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's

name and the docket number of this CAFO.

53. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Brian Kennedy (LR-17J)
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Eaton Weiler (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 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. By entering into this Consent Agreement, Respondent certifies to the best of the knowledge and information after appropriate due inquiry of the person signing this Consent Agreement on behalf of Respondent that it is complying fully with applicable requirements of RCRA, 42 U.S.C. §§ 6901 – 6939(e), the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized Illinois corollaries to the federal regulations.

58. 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: weiler.eaton@epa.gov (for Complainant), and rondana@danacompanies.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

60. 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.

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

62. 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).

63. The terms of this CAFO bind the Parties, their successors, and assigns.

64. 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.

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

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

Dana Transport, Inc., Respondent


2/5/2018
Date



Ron Dana
Owner
Dana Transport, Inc.

United States Environmental Protection Agency, Complainant

02/16/2018
Date



~~Margaret M. Guerriero~~ Michael D. Harris
Acting Division Director
Land and Chemicals Division

In the Matter of:
Dana Transport, Inc.
Docket No RCRA-05-2018-0006

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.

02/21/18
Date

Debra Kay Smith
for Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Dana Transport, Inc.
Docket Number: **RCRA-05-2018-0006**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2018-0006**, which was filed on 2/26/2018, this day in the following manner to the addressees:

Copy by e-mail to
Respondent:

Ron Dana
rondana@danacompanies.com

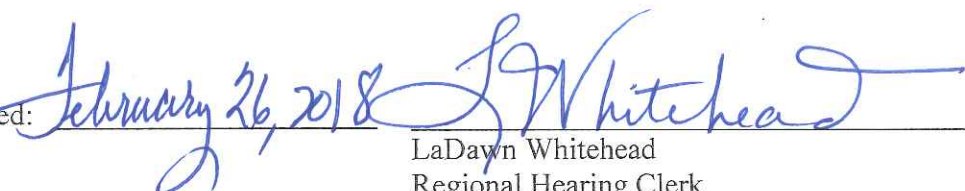
Copy by e-mail to
Attorney for Complainant:

Eaton Weiler
weiler.eaton@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

February 26, 2018 

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