



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

MAY 21 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

LR-8J

Mr. Stephen C. Miller, President  
Mr. Malcolm H. Miller, Vice President  
Walworth Foundries Incorporated  
N3355 Highway 14  
Darien, Wisconsin 53114

Re: Consent Agreement and Final Order  
Walworth Foundries, Inc.  
EPA ID No: WID 006 073 944  
Docket No: RCRA-05-2008-0009

JBW

Dear Mr. Stephen Miller and Mr. Malcolm Miller:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on May 21, 2008 with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$50,000 in the manner prescribed in paragraphs 38 and 39 of the CAFO, and reference all checks with the number BD and docket number 2750842R009. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,


Willie H. Harris, P.E.  
Chief  
RCRA Branch  
Land and Chemicals Division

Enclosures

cc: Patricia Chabot, WDNR (w/CAFO)  
Michael Ellenbecker, WDNR, (w/CAFO) Sturtevant Service Center

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of: )  
)  
**Walworth Foundries, Inc.,** )  
**N3355 Hwy 14** )  
**Darien, Wisconsin 53114** )  
)  
**EPA ID No. WID 006 073 944** )  
)  
**Respondent** )

Docket No. **RCRA-05-2008-0009**  
**Consent Agreement  
and Final Order** 

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**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency ("U.S. EPA" or "Complainant") and the Walworth Foundries, Inc. ("Walworth" or "Respondent") agree to resolve this action before filing a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") by the filing of this Consent Agreement and Final Order ("CAFO"). 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

## **I. PRELIMINARY STATEMENT AND JURISDICTION**

This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to Sections 22.01(a)(4), 22.13(b), 22.18(b)(2) and (3), and 22.37 of the Consolidated Rules. 40 C.F.R. §§ 22.01(a)(4), 22.13(b), 22.18(b)(2) and (3), and 22.37.

1. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.
2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, U.S. EPA.

## **II. REGULATORY BACKGROUND**

3. 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.
4. 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 mandatory requirements promulgated

pursuant to Subtitle C (Sections 3001-3023) of RCRA, 42 U.S.C. §§ 6921-6939e, or of 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.

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on January 31, 1986. 51 Fed. Reg. 3783. The Administrator of U.S. EPA granted final authorization to administer additional RCRA and certain HSWA requirements on June 6, 1989 (54 Fed. Reg. 22278); January 22, 1990 (54 Fed. Reg. 48243); April 24, 1992 (57 Fed. Reg. 15029); August 2, 1993 (58 Fed. Reg. 31344); and October 4, 1994 (59 Fed. Reg. 39971). The U.S. EPA authorized Wisconsin regulations are codified at Wisconsin Administrative Code (WAC) Chapters NR 600-690. See also 40 C.F.R. § 272.2500 *et seq.*
6. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), U.S. EPA must carry out the new requirements promulgated pursuant to the HSWA, Pub. L. 98-616, until such time as the State is authorized to carry out such program. Under the terms of Section 3006(g), the requirements established by HSWA are effective in all States regardless of their authorization status and are implemented by U.S.

EPA until the State is granted final authorization with respect to those requirements.

7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides U.S. EPA with the authority to enforce State regulations in those States authorized to administer a hazardous waste program.
8. U.S. EPA has provided the State of Wisconsin notice of this action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
9. Under Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited. Accordingly, Wisconsin's authorized hazardous waste regulations at WAC ss. NR 680.30, 680.31, and 680.32(2) [40 CFR §§ 270.1(c), and 270.10(a), (d)] require that persons who store hazardous waste obtain a hazardous waste storage license.
10. Under WAC s. NR 610.07(1), a very small quantity generator of hazardous waste who accumulates at any time 1000 kilograms of hazardous waste, is not exempt from full regulation as a small quantity generator. Under WAC ss. NR 610.08(1)(n)(1) and 610.08(5), a small quantity generator of hazardous waste may accumulate hazardous waste on-site for 180 days or less without a storage license or without having interim status, provided that the generator also complies with the other conditions specified in s. NR 610.08(1) [40 C.F.R. §

262.34(d)]. Upon accumulating hazardous waste longer than the 180-day accumulation limit in ss. NR 610.08(1)(n)(1) and 610.08(5), a small quantity generator becomes a hazardous waste treatment, storage, or disposal facility (TSDF) subject to the TSDF performance standards of WAC ss. NR 630, 640, 645 and 680 [40 CFR Part.264 or 265].

11. Pursuant to WAC s. NR 610.08(1)(u) and (v)(1), (2), a small quantity generator who has accumulated 1000 kilograms or more of hazardous waste can qualify for an exemption from hazardous waste storage licensing and regulation as a TSDF by, *inter alia*, properly training employees and ensuring their thorough familiarity with proper waste handling and emergency procedures relevant to their responsibilities; and by providing an annual review of such training, and maintaining a written description of the training program as required in s. NR 630.16. Pursuant to WAC s. NR 615.02, a small quantity generator who has accumulated hazardous waste longer than 180 days, and does not comply with s. NR 610.08(1), becomes subject to the TSDF hazardous waste training program requirements of WAC ss. NR 630.16 and 680.22(14).
12. WAC ss. NR 630.16 and 680.22(14) [40 C.F.R. § 265.16] require each owner or operator of a TSDF in existence prior to November 19, 1980, to provide all facility personnel in positions related to hazardous waste management with a program of classroom instruction or on-the-job training that teaches them to perform their

duties in a way that ensures the facility's compliance with the requirements of WAC s. NR 600.04 and ss. NR 630 and 680 [40 C.F.R. Part 265]. More specifically, WAC ss. NR 630.16 and 680.22(14), require "existing" TSDFs to train their hazardous waste management personnel in a way that ensures the facility's compliance with the requirements of s. NR 600.04 and ss. NR 630 to 680.

13. WAC ss. NR 610.05(1)-(3), 610.07(1)(a), and 610.08(1)(a), require "very small quantity generators" of hazardous waste who accumulate more than 1000 kilograms of hazardous waste, and "small quantity generators," to determine whether solid waste that they generate is hazardous waste.

### **III. Factual Allegations**

At all times relevant to this matter, unless otherwise specified:

14. Respondent, Walworth Foundries, Inc. (Walworth), is a corporation incorporated under the laws of the State of Wisconsin.
15. Since the 1940s, Walworth has owned or operated a metal foundry business on real property located at Highway 14, Darien, Wisconsin 53114 (the "Facility").
16. Until in or about December, 2000, Respondent used non-ferrous brass ingot containing lead, as a raw material or "feedstock" in its foundry operation. The non-ferrous brass ingot was melted and poured into a sand mold to form a cast

part. After the cast part had cooled, Respondent would break the sand mold from the cast part, and return the sand to the Hunter molding machine to be reused. With each use of the sand, the sand became more contaminated with lead from the brass ingot. After repeated uses of the sand, the sand became no longer usable. In addition, Respondent's Hunter molding machine developed mechanical problems that resulted in the inability of Respondent to continue using that machine.

17. With the inability to reuse the sand and/or to continue using the Hunter molding machine, Respondent collected and accumulated used and reused sand and placed it in three, one-cubic-yard boxes at the Facility, beginning in or about October 2000. The sand in the three, one-cubic yard boxes was toxicity characteristic hazardous waste for lead, with the hazardous waste code D008.
18. Respondent also put crude cast parts in a tumbling device (Wheelabrator) at the Facility, that removed rough edges and burrs on the parts. Operation of the Wheelabrator generated dust that was directed outside to a dust collector. The dust settled at the bottom of this device, where Respondent periodically removed it and accumulated and stored it in a pile outside the building and on the ground at the Facility. This Wheelabrator dust was a solid waste under RCRA.
19. Walworth's foundry business at the Facility also generated and accumulated other hazardous waste olivine sand and other solid waste. By November 4,



2004, Respondent had accumulated approximately forty, 55-gallon drums containing hazardous olivine sand waste, and other waste generated by the foundry business at the Facility, in an intermodal shipping container outside the buildings, on the grounds of the Facility.

20. On November 29, 1989, Walworth notified the State of Wisconsin that it was a generator of hazardous waste at the Facility; and that it generated toxicity characteristic hazardous waste with the waste code D008. On October 27, 1999, Walworth notified the State of Wisconsin that its hazardous waste generation was less than 1,000 kg/mo. From on or about October 1, 2000, through on or about September 30, 2001, Respondent generated and accumulated more than 1,000 kilograms of D008 hazardous waste at the Facility. From on or about September 30, 2001, to on or about December 31, 2004, Respondent stored this accumulated hazardous waste in three 1 cubic yard boxes, and in approximately six 55-gallon drums in the intermodal shipping container, at the Facility. The hazardous waste stored in the boxes was shipped off-site on or about December 31, 2004, and the hazardous waste stored in the intermodal shipping container was shipped off site on or about January 23, 2007.

21. During the periods from at least March 31, 2003, to December 31, 2004, Walworth stored more than 1,000 kilograms of hazardous waste with the waste code D008, in the three 1 cubic yard storage boxes, for longer than 180 days. During the period from March 31, 2003, to January 23, 2007, Respondent stored approximately forty 55-gallon drums, some of which contained hazardous waste olivine sand, and some of which contained other waste generated by the foundry business at the Facility, in an intermodal shipping container at the Facility, for longer than 180 days.
22. From at least March 31, 2003, to on or about July 27, 2006, Walworth never determined whether the dust generated by the Wheelabrator was hazardous waste. From at least March 31, 2003, to on or about October 30, 2006, Walworth never determined whether the solid wastes in the forty drums in the intermodal shipping container, were hazardous waste.
23. From March 31, 2003, to March 31, 2008, Respondent employed at the Facility persons whose responsibilities included hazardous waste management.
24. From March 31, 2003, to March 31, 2008, Respondent failed to provide either initial or annual review hazardous waste training, to employees in positions involving hazardous waste management responsibilities, which taught them to perform their duties in a way that ensures the facility's compliance with the requirements of ss. NR 630 through 680.

25. From March 31, 2003, to March 31, 2008, Respondent failed to provide initial or annual review training to hazardous waste management personnel, which taught them hazardous waste management procedures relevant to the positions in which they were employed, including but not limited to hazardous waste inspection or storage procedures and requirements.
26. Walworth never obtained or applied for a hazardous waste storage license, and never obtained or applied for interim status to store hazardous waste, for the Facility.

#### **IV. Alleged Violations**

27. From at latest March 31, 2003, to October 30, 2006, Walworth failed to determine whether solid wastes generated at the Facility were hazardous waste, in violation of WAC ss. NR 610.05(1)-(3), 610.07(1)(a), and 610.08(1)(a).
28. From at latest March 31, 2003, to March 31, 2008, Respondent failed to ensure that facility personnel successfully completed a program of classroom instruction or on-the-job training that taught them to perform their duties in a way that assures the facility's compliance with requirements of WAC ss. NR 630 through 680; and further failed to provide training which taught them hazardous waste management procedures relevant to the positions in which they were employed, including but not limited to hazardous waste inspection or storage procedures

and requirements; in violation of WAC ss. NR 630.16(1) and (1)(a), 630.16(3), and 680.22(14).

29. From March 31, 2003, to January 23, 2007, Respondent stored hazardous waste at the Facility without a hazardous waste storage license or interim status, in violation of WAC ss. NR 680.30, 680.31, and 680.32(2) [40 CFR §§ 270.1(c), and 270.10(a), (d)].

#### **V. Terms of Settlement**

30. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 CFR § 22.13(b), without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.
31. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
32. Respondent consents to the issuance of this CAFO and the assessment of the civil penalty as outlined in Section VI of this CAFO.
33. Respondent has demonstrated and certifies that it came into compliance with the conditions and requirements that formed the basis of the allegations in Section IV of this CAFO.

34. Respondent consents to the issuance of this CAFO and payment of a civil penalty, as set forth below in this CAFO.

#### **VI. The Civil Penalty**

35. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000.00 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, 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 \$27,500.00 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997, and a civil penalty up to \$32,500.00 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.
36. Complainant determined the civil penalty according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements” to determine an appropriate civil penalty. 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this action with specific reference to EPA’s 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available

upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

37. After considering the facts and circumstances of this action, the seriousness of the violation, Respondent's good faith efforts to comply with applicable requirements, and U.S. EPA's 2003 RCRA Civil Penalty Policy, Complainant determined the appropriate civil penalty is \$50,000.00.
38. Respondent shall pay the civil penalty of \$50,000.00, within 30 days following the effective date of this CAFO.
39. Respondent shall pay the civil penalty by cashier's or certified check, payable to the Order of the "Treasurer, United States of America," and sent to:

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

Respondent shall designate on the face of the check the name and docket number of this action. **Respondent may elect to pay the civil penalty by wire transfer.** Wire transfers should be directed to the Federal Reserve Bank of New York at the following address:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727  
Environmental Protection Agency "

Interest shall accrue on any portion of the civil penalty which remains unpaid,  
after ninety (90) days, at the prevailing United States Treasury tax and loan rate,  
in accordance with 4 C.F.R. § 102.13(c). Respondent shall provide a copy of all  
checks to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Duncan Campbell (LR-8J)  
Land and Chemicals Division  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604, and,

Michael J. McClary (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

40. The civil penalty above represents civil penalties assessed by the U.S. EPA and shall **not** be deductible for purposes of federal taxes.

## **VII. Final Terms**

41. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law. Nothing in this CAFO shall restrict the right of Respondent to raise any administrative, legal, or equitable remedy, claim, or defense with respect to future actions for which U.S. EPA is reserving its rights.
42. Pursuant to 31 U.S.C. § 3717, the U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the amount of any unpaid portion of the civil penalty payment specified in paragraph 39, above, that is not paid by the date required. Interest referred to in paragraph 39 above and herein, 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). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of five (5) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due.



Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

43. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or 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, nor shall it be construed to constitute U.S. EPA approval of any equipment or technology installed by Respondent in connection with the terms of this Agreement.
44. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO. In consideration of the civil penalty payments to be made by Respondent, U.S. EPA covenants not to bring any administrative or judicial action against Respondent for civil penalties or injunctive relief based upon the allegations of this CAFO, except to enforce the terms and conditions of this CAFO.
45. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to issue such orders or to seek such

injunctive relief as U.S. EPA deems necessary to protect human health or the environment, nor shall anything in this CAFO be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to take appropriate actions to address conditions that may present an imminent and substantial endangerment to human health or the environment. Nothing in this CAFO is intended to operate in any way to resolve any criminal liability of the Respondent, nor shall anything in this CAFO be construed to operate in any way to resolve any criminal liability of the Respondent. Nothing herein shall restrict the right of Respondent to raise any administrative, legal, or equitable remedy, claim, or defense with respect to future actions, if any, for which U.S. EPA is reserving its rights. Respondent hereby reserves and retains any rights, defenses, and causes of action not explicitly and specifically waived in this CAFO.

46. The effective date of this CAFO shall be the date on which this CAFO is filed with the Regional Hearing Clerk, Region 5, U.S. EPA.
47. This CAFO shall terminate thirty (30) days after Respondent's compliance with all of the terms and conditions set forth herein and Respondent's submittal of all required documentation.
48. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

49. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.
50. This CAFO constitutes the entire agreement between the parties.
51. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501, et seq.
52. This CAFO constitutes a Final Order pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
53. Each undersigned representative of a Party to this Consent Agreement and Final Order, consisting of eighteen (18) pages, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such Party to this document.

In the Matter of: Walworth Foundries  
Docket No.  
Consent Agreement and Final Order.  
EPA ID No. WID 006 073 944

RESPONDENT

Stephen Briller Malcolm H. Miller  
Name, Title PRESIDENT V-P  
Walworth Foundries, Inc

10 APRIL 08  
Date

COMPLAINANT  
Land and Chemicals Division  
Region 5  
United States Environmental Protection Agency

Margaret Guerriero for  
Margaret Guerriero, Director  
Date  
Land and Chemicals Division

5/14/08  
Date

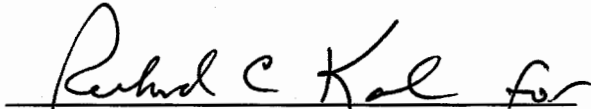
RCRA-05-2008-0009  
JBW

In the Matter of: Walworth Foundries  
Docket No. RCRA-05-2008-0009  
Consent Agreement and Final Order.



**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. IT IS SO ORDERED this 20th day of MAY, 2008.



Bharat Mathur  
Acting Regional Administrator  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago Illinois 60604-3590

2008 MAY 21 PM 4:24  
RECEIVED  
REGIONAL HEARING CLERK  
MAY 21 2008

**CASE NAME:** Walworth Foundries, Inc.

**DOCKET NO:** RCRA-05-2008-0009 *JBW*

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Mr. Stephen C. Miller, President  
Mr. Malcolm H. Miller, Vice President  
Walworth Foundries Incorporated  
N3355 Highway 14  
Darien, Wisconsin 53114

Return Receipt # 7001 0320 0006 01849656

Dated: 5/21/08

*Katrina Jones*

Katrina Jones  
Administrative Program Assistant  
United States Environmental Protection Agency  
Land and Chemicals Division -RCRA Branch  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590  
(312) 353-5882

RECEIVED  
REGIONAL HEARING CLERK  
MAY 21 12 14 PM '08

## **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.