



MAR 12 2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 MAR 12 AM 11:43
REGIONAL HEARING
CLERK

Mr. Arnold S. McHone
President
McHone Industries, Inc.
110 Elm Street
Salamanca, New York 14779


Re: In the Matter of McHone Industries, Inc.
Docket No: RCRA-02-2009-7108

Dear Mr. McHone:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) under Section 3008 of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928, resolving the above referenced action. Pursuant to the terms of the CA/FO, the civil penalty must be received by the Government on or before 45 calendar days after March 10, 2010.

Please do not hesitate to contact me if you have any questions. Thank you for your cooperation in this matter.

Sincerely,


Amy R. Chester
Assistant Regional Counsel
212 637-3213

Enclosure

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway, 5th Floor
Albany, New York 12233-7250

Adrian Stevens, Director
Environmental Protection Department
Seneca Indian Nation
84 Iroquois Drive
Irving, New York 14081

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In The Matter of:

McHone Industries, Inc.

Respondent.

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended

**CONSENT AGREEMENT AND FINAL
ORDER**

Docket No.: RCRA-02-2009-7108

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
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PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is McHone Industries, Inc. ("McHone" or "Respondent"). The McHone facility is located in Salamanca, New York.

The State of New York is not authorized to operate the RCRA program in Indian country. EPA implements and administers the RCRA program in Indian country.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 30, 2009. The Complaint alleged that Respondent violated specific provisions of RCRA and its implementing regulations

concerning the management of hazardous waste. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in 40 C.F.R. § 260.10.
2. Respondent specializes in the design, manufacture, fabrication and finishing of tubular products at a facility located at 110 Elm Street in Salamanca, New York. Respondent, or a predecessor, has been conducting such operations at this Salamanca location since approximately 1978.
3. Salamanca, New York is located on property owned by the Seneca Nation of Indians ("Nation").
4. Respondent leases its Elm Street, Salamanca, New York property from the Nation.
5. The Salamanca location where Respondent conducts its manufacturing operations constitutes a "Facility" as that term is defined in 40 C.F.R. § 260.10.
6. Respondent is the "owner" and/or "operator" of the Facility as those terms are defined in 40 C.F.R. § 260.10.
7. Respondent stores and/or stored hazardous waste at its Facility as the term "storage" is defined in 40 C.F.R. § 260.10.

8. Neither Respondent, nor a predecessor, submitted Part A or Part B of a RCRA permit application to EPA regarding the Facility. Respondent's Facility never qualified for interim status nor obtained a permit pursuant to Section 3005 of RCRA and 40 C.F.R. Part 270.
9. In October 2008, Respondent notified EPA that it was a "generator" of "hazardous waste" at the Facility, as those terms are defined in 40 C.F.R. § 260.10. Respondent further indicated that it was a conditionally exempt small quantity generator, generating less than 100 kilograms (220 pounds) of non-acute hazardous waste a month. On or about January 5, 2009, EPA acknowledged Respondent's notification and assigned it EPA identification number NYD980648364.
10. Pursuant to 40 C.F.R. §§ 261.5(b) and (g), subject to certain inapplicable exceptions, conditionally exempt small quantity generators are not subject to regulation under 40 C.F.R. Parts 262 through 266, 268, and 270 provided they comply with certain specified requirements including making hazardous waste determinations pursuant to 40 C.F.R. § 262.11.
11. As of at least June 18, 2008, Respondent had not determined if a certain solid waste generated in its laser cutting/etching processes constituted a hazardous waste.
12. Respondent's failure to determine whether each solid waste generated at its facility constituted a hazardous waste was a violation of 40 C.F.R. § 262.11.
13. Pursuant to 40 C.F.R. § 262.20(a), a generator who transports, or offers for transportation, hazardous waste must prepare a manifest.
14. On or about June 18, 2008, Respondent shipped hazardous waste off site. Respondent failed to prepare a manifest for this shipment of hazardous waste.
15. Respondent's failure to prepare a manifest for its June 18, 2008 shipment of hazardous

waste off-site was a violation of 40 C.F.R. § 262.20(a).

16. Pursuant to 40 C.F.R. § 261.5(g)(2), conditionally exempt small quantity generators who accumulate more than 1000 kilograms (2,200 pounds) of their own hazardous waste are subject to regulation as small quantity generators (“SQGs”). The regulations for generators, including SQGs, are set forth in 40 C.F.R. Part 262.

17. On or about June 18, 2008, Respondent accumulated over 1000 kilograms of D007 hazardous waste at its facility, subjecting it to regulation as a SQG.

18. Pursuant to 40 C.F.R. § 262.34(f), a small quantity generator who accumulates hazardous waste for more than 180 days is an operator of a storage facility and is subject to the permitting requirements set forth in 40 C.F.R. Part 270.

19. As of at least June 18, 2008, Respondent accumulated hazardous waste for a period exceeding more than 180 days, subjecting it to the permitting requirements set forth in 40 C.F.R. Part 270.

20. Respondent’s Facility never obtained interim status or a permit from EPA authorizing the storage of hazardous waste.

21. Respondent’s storage of hazardous waste at its Facility prior to at least June 18, 2008 without a permit was a violation of 40 C.F.R. § 270.1(c) and Section 3005 of the Act, 42 U.S.C. § 6925.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and

voluntarily agrees as follows:

1. Commencing upon the effective date of this Consent Agreement and Final Order and continuing thereafter, Respondent shall:
 - a. make hazardous waste determinations for each solid waste that it generates at its facility as required by 40 C.F.R. § 262.11;
 - b. prepare manifests for each shipment of hazardous waste sent off-site as required by 40 C.F.R. § 262.20(a);
 - c. comply with all applicable and appropriate provisions for generators including:
 - i. the conditions for conditionally exempt small quantity generators set forth in 40 C.F.R. § 261.5 during each calendar month in which the Respondent generates 100 kilograms or less of hazardous waste, provided Respondent does not accumulate more than 1000 kilograms of hazardous waste on-site (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or
 - ii. the provisions for small quantity generators set forth or referenced in 40 C.F.R. § 262.34(d) during each calendar month in which the Respondent generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste, provided Respondent neither accumulates hazardous waste in quantities exceeding more than 6000 kilograms nor accumulates hazardous waste for more than 180 days (the rules for acute hazardous waste are more stringent and should be complied with if applicable); or
 - iii. the provisions for large quantity generators set forth in 40 C.F.R. § 262.34(a), provided hazardous waste is accumulated on site for 90 days or less;
 - d. as an alternative to compliance with the generator provisions identified in Paragraph 1.c.i. – iii. of this Compliance Agreement, obtain and comply with a hazardous waste permit pursuant to applicable provisions set forth of 40 C.F.R. Part 270. However, Respondent must comply with the appropriate generator requirements cited in Paragraph 1.c above until such permit is obtained.
2. Within thirty days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing the status of its compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. Respondent

shall indicate if it intends to operate pursuant to the generator provisions referenced above, and if so, whether it intends to continue operating as a conditionally exempt small quantity generator, as it had indicated in its 2008 notification to EPA. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Ronald Voelkel
Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint as applied to its facility and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.
4. Respondent shall pay a civil penalty to EPA in the total amount of **twenty four thousand and three hundred and seventy five dollars (\$ 24,375)**. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Each check shall be identified with a notation thereon: **In the Matter of McHone**

Industries, Inc., and shall bear thereon the Docket Number:

RCRA-02-2009-7108. If Respondent chooses to make the payment by EFT, then

Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **McHone Industries, Inc.**
- 7) Case Number: **RCRA-02-2009-7108**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be **received** on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the "due date."

- a. Failure to pay the civil penalty in full according to the above provisions may result

in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.

c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

5. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the specific civil and administrative claims alleged in the Complaint issued in this matter pursuant to Section 3008 of RCRA. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms.

Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or

communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
8. Each party shall bear its own costs and fees in this matter.
9. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.
10. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
11. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

McHone Industries, Inc.

BY: Arnold S. McHone

NAME: ARNOLD S. MCHONE

TITLE: PRESIDENT

DATE: 2-23-2010

COMPLAINANT:

United States Environmental Protection
Agency – Region 2

BY: Dore LaPosta

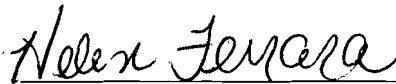
NAME: Dore LaPosta

TITLE: Director, Division of Enforcement &
Compliance Assistance

DATE: 3/8/10

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



Helen Ferrara
Regional Judicial Officer
EPA-Region 2

DATE: ~~February~~ March 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the MAR 12 2010 I caused a copy of the Consent Agreement and Final Order entered in In the Matter of McHone Industries, Inc., Docket No.: RCRA-02-2009-7108, to be sent to the following persons in the manner indicated:

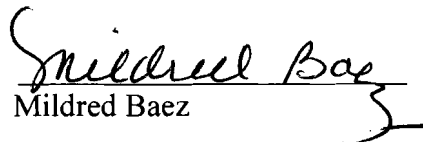
By United States First Class Mail:

Arnold McHone, President
McHone Industries, Inc.
PO Box 69
110 Elm Street
Salamanca, New York 14779

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
290 Broadway, 16th Floor
New York, New York 10007
Fax (212) 637-3199

Date: MAR 12 2010


Mildred Baez