

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5th St.

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)	
)	
American Railcar Industries, Inc.)	Docket No. RCRA-07-2006-0282
)	
1101 Bedford Avenue)	
North Kansas City, Missouri, 64116)	
)	
EPA ID# MOT300010022)	
)	
)	CONSENT AGREEMENT
Respondent.)	AND FINAL ORDER

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 28, 2006, when the United States Environmental Protection Agency, Region 7 (Complainant or EPA) issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to American Railcar Industries, Inc. (American Railcar or Respondent), owner and operator of a rail car repair and maintenance facility located at 1101 Bedford Avenue, Kansas City, Missouri, 64118. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of Section 3005 of RCRA and RSMo § 260.390(1). The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is

the result of such negotiations and resolves the liability of Respondent for matters alleged in the Complaint. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 Code of Federal Regulations (C.F.R.) Part 22 (Consolidated Rules of Practice).

II. CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of the Consent Agreement portion of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order. The terms of this Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and its right to appeal the Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees. Respondent is entering into this settlement solely for the purpose of avoiding costly and protracted litigation.

6. This Consent Agreement and Final Order settles all civil administrative claims for the RCRA violations alleged in the Complaint. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other provision of RCRA or other applicable law.

7. The EPA acknowledges that a portion of the paint referenced in Paragraph 16 of the Complaint was not waste.

8. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

9. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$3,000.00 as set forth in Section III.A. of the Final Order.

10. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

11. This Consent Agreement and Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 15 of the Final Order provides Respondent with written notice, in accordance with Paragraph 24 of the Final Order, that all requirements hereunder have been satisfied.

12. Respondent understands that failure to comply with the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.

13. Each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

14. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a civil penalty of \$3,000.00.

15. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region 7
c/o Mellon Bank
PO Box 371099M
Pittsburgh, PA 15251.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Belinda Holmes
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and to:

Marc Matthews ARTD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

For purposes of any submissions required by this Consent Agreement and Final Order, Mr.

Matthews is designated as the Complainant's representative.

16. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of two percent (2%) per annum.

17. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

18. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. Reservation of Rights

19. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of

RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$32,500 per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

20. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.

21. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

22. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

23. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

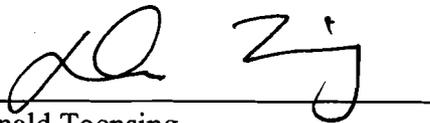
D. Termination

24. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

3-2-07
Date



Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

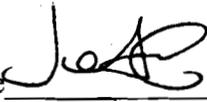
03-01-07
Date



Belinda Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

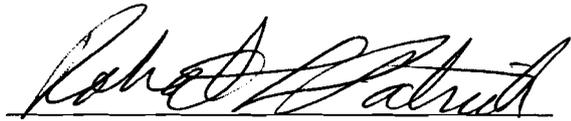
RESPONDENT:
American Railcar Industries, Inc.

2-28-07
Date

Signature 

Printed Name Julie O'Keefe
Armstrong Teasdale LLP
Title Counsel for American
Railcar Industries,
Inc.

IT IS SO ORDERED. This Final Order shall become effective immediately.

A handwritten signature in black ink, appearing to read "Robert Patrick", written over a horizontal line.

Robert Patrick
Regional Judicial Officer

Date March 2, 2007

IN THE MATTER OF American Railcar Industries, Inc., Respondent
Docket No. RCRA-07-2006-0282

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Belinda Holmes
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Julie O'Keefe, Esq.
Armstrong Teasdale, LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Carl C. Charneski
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 3/2/07


Kathy Robinson
Hearing Clerk, Region 7