



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

SEP 30 2009

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert L. Schiewe
President
Magnetic Inspection Laboratory, Inc.
1401 Greenleaf Avenue
Elk Grove Village, IL 60007

Re: Consent Agreement and Final Order
Magnetic Inspection Laboratory (EPA ID No.: ILD049998297)
Docket No: **RCRA-05-2009-0024**

Dear Mr. Schiewe:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on SEP 30 2009 with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$62,031.20 in the manner prescribed in paragraph 122 of the CAFO, and reference all checks with the number BD 7750942R016 and docket number **RCRA-05-2009-0024** our payment is due within 30 calendar days after the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's 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: Todd Marvel, Illinois Environmental Protection Agency (w/CAFO)

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.

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 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), 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 – 6939e, [40 C.F.R. §§ 260.1 – 279.82].

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, pursuant to sections 3002, 3003 and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923 and 6924.

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 Illinois 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. 3778 (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.

16. 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, 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.

Factual Statements

17. Respondent was and is a “person” as defined by the Illinois Administrative Code 35 IAC § 720.110 [40 C.F.R. § 260.10] and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. On September 11, 2007, EPA conducted an inspection of Respondent’s facility.

19. The facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

20. Respondent’s production operations at its facility include precision welding, non-destructive testing, anodizing, conversion coating, painting and metal cleaning on aluminum steel and titanium substrates.

21. At all times relevant to this Complaint, Respondent generated wastes at the Facility which were solid wastes, as defined in 35 IAC § 721.102, 40 C.F.R. § 260.10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

22. At all times relative to this Complaint, Respondent generated solid wastes which were hazardous wastes as defined at 35 IAC § 721.103 (40 CFR § 261.3).

23. Respondent is a “generator,” as that term is defined in 35 IAC § 720.110, and 40 C.F.R. § 260.10.

24. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, and the analogous Illinois Administrative Code as part of the applicable state hazardous waste management program for the state of Illinois, or both.

25. At all times relevant to the allegations in this CAFO, the Respondent was a large quantity generator because it produced more than 1,000 kilograms (2,205 pounds) of hazardous waste per month.

Count 1

Failure to apply for and obtain a permit as required, by failing to meet exemption conditions (Failure to Label a Hazardous Waste Storage Tank and Container)

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

27. Except as otherwise provided, a large quantity generator may, for 90 days or less, accumulate hazardous waste that is generated on-site without an Illinois hazardous waste operating permit, provided that it meets each of the conditions of 35 IAC § 722.134(a) and (c), [40 C.F.R. § 262.34(a) and (c)].

28. Pursuant to 35 IAC § 722.134(a)(3) [40 CFR § 262.34(a)(3)], a generator may, for 90 days or less, accumulate hazardous waste that is generated on-site without an Illinois hazardous waste operating permit, provided that each tank and container used for the accumulation of hazardous waste have been labeled or clearly marked with the words, "Hazardous Waste."

29. 35 IAC § 722.134(c)(1)(B) [40 CFR § 262.34(c)(1)(ii)] provides that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 35 IAC § 721.133(e) [40 CFR § 261.33(e)] in containers at or near any point of generation where wastes initially accumulate that is under the control of the operator of the process generating the waste without a permit or interim status and without complying with 35 IAC § 722.134(a) [40 CFR § 262.34(a)] provided the generator marks the containers either with the words, "Hazardous Waste" or with other words that identify the contents of the containers.

30. At the time of the inspection, Respondent was storing hazardous waste consisting of spent acids at its facility in its Chemical Milling Hazardous Waste Tank (CMHWT).

31. At the time of the inspection, the CMHWT was not labeled with the words, "Hazardous Waste."

32. Also at the time of the inspection, Respondent was storing hazardous waste solvents from its painting operations in a 55-gallon container located in a metal cabinet near one of its paint booths.

33. The container was not labeled with the words, "Hazardous Waste," or with other words that identified its contents.

34. Therefore, Respondent failed to comply with the generator permit exemption conditions of 35 IAC §§ 722.134(a)(3) and 722.134(c)(1)(B) [40 CFR § 262.34(a)(3) and 262.34(c)(1)(ii)].

35. Respondent did not have a permit or interim status for the storage of hazardous waste at its facility.

36. As set forth above, Respondent did not meet the conditions of 35 IAC §§ 722.134(a)(3) and 722.134(c)(1)(B) [40 CFR § 262.34(a)(3) and 262.34(c)(1)(ii)]. The satisfaction of these conditions is necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage (accumulation) of hazardous waste; therefore, 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 35 IAC § 703.121(a).

Count 2

Failure to Obtain an Engineering Assessment for the Design and Installation of New Tank System

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

38. 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] requires generators accumulating hazardous waste on-site in tank systems, without a permit, to comply with 35 IAC Part 725, Subpart J, “Tank Systems,” [40 CFR Part 265, Subpart J], including 35 IAC § 725.292 [40 CFR § 265.192].

39. 35 IAC § 725.292(a) [40 CFR § 265.192(a)] requires the owner or operator of a new tank system or component to ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 35 IAC § 702.126(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.292(a) [40 CFR § 264.192(a)].

40. Minimum requirements for this assessment are included at 35 IAC § 725.292(a)(1) through (a)(5) [40 CFR § 265.192(a)(1) through (a)(5)].

41. 35 IAC § 725.292(b) [40 CFR § 265.192(b)] requires the owner and operator of a new tank system to ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing or placing a new tank

system or component in use, an independent, qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system or component for the presence of any: weld breaks; punctures; scrapes of protective coatings; cracks; corrosion; and other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use. This installation inspection is required to be documented and must also include the certification statements at 35 IAC § 702.126(d). 35 IAC § 725.292(g) [40 CFR § 265.192(g)]. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.292(b) [40 CFR § 264.192(b)].

42. 35 IAC § 725.292(d) [40 CFR § 265.192(d)] requires that all new tanks and ancillary equipment comprising the tank system be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to the tank system being covered, enclosed, or placed in use. This testing must be documented and must also include the certification statements at 35 IAC § 702.126(d). 35 IAC § 725.292(g) [40 CFR § 265.192(g)]. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.292(d) [40 CFR § 264.192(d)].

43. At the time of the inspection and upon the request of the EPA representative, Respondent was unable to provide a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 35 IAC § 702.126(d), attesting that its CMHWT system had sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; or state or otherwise demonstrate that such an assessment had ever occurred.

44. At the time of the inspection, and upon the request of the EPA representative, Respondent was unable to state, provide documentation of, or otherwise demonstrate that an independent, qualified installation inspector or a qualified Professional Engineer, inspected its tank system for structural damage or inadequate construction or installation prior to its being placed into use.

45. At the time of the inspection and upon the request of the EPA representative, Respondent was unable to state, provide documentation of, or otherwise demonstrate that its tank system was tested for tightness prior to it being placed into use.

46. Respondent failed to comply with 35 IAC § 725.292(a), (b) and (d) [40 CFR § 265.192(a), (b), and (d)] by storing hazardous waste in its CMHWT system without: (1) obtaining a written assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste; (2) without first having an independent, qualified installation inspector or an independent, qualified, registered professional engineer inspect the CMHWT system for the presence of structural damage or inadequate construction or installation prior to placing it in use; and (3) without first having the CMHWT and its associated ancillary equipment tested for tightness before placing it in use.

47. Therefore, Respondent failed to comply with the exemption for a hazardous waste storage permit at 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)].

48. Therefore, Respondent was not exempt from the requirements at 35 IAC Part 724 [40 CFR Part 264]; including the requirements of 35 IAC § 724.292 [40 CFR § 264.192].

49. The requirements of 35 IAC § 724.292(a), (b) and (d) [40 CFR § 264.192(a), (b) and (d)] are identical to the requirements of 35 IAC § 725.292(a), (b) and (d) [40 CFR § 265.192(a), (b) and (d)] as described in paragraphs 39 through 42.

50. Therefore, Respondent violated 35 IAC § 724.292(a), (b) and (d) [40 CFR § 264.192(a), (b) and (d)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count 3

Failure to Equip Secondary Containment with Leak Detection

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

52. 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] requires generators accumulating hazardous waste on-site in tank systems, without a permit, to comply with 35 IAC Part 725, Subpart J, "Tank Systems," [40 CFR Part 265, Subpart J] including 35 IAC § 725.293 [40 CFR § 265.193].

53. 35 IAC § 725.293 [40 CFR § 265.193] requires generators storing hazardous waste in tank systems to provide the tank system with secondary containment. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.293 [40 CFR § 264.193].

54. 35 IAC § 725.293(c)(3) [40 CFR § 265.193(c)(3)] requires that the secondary containment is provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or

as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing detection technology or site conditions will not allow detection of a release within 24 hours. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.293(c)(3) [40 CFR § 264.193(c)(3)].

55. When the secondary containment consists of a double-walled tank, the double-walled tank must be provided with a built-in continuous leak detection system capable of detecting a release within 24 hours or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours. 35 IAC § 725.293(e)(3)(C) [40 CFR § 265.193(e)(3)(iii)]. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.293(e)(3)(C) [40 CFR § 264.193(e)(3)(iii)].

56. Respondent stored hazardous waste consisting of spent acids at its facility in its CMHWT.

57. The secondary containment for the CMHWT consisted of a double-walled tank.

58. At the time of the inspection, Respondent's CMHWT was not equipped with a leak detection system.

59. Therefore, Respondent failed to comply with 35 IAC §§ 725.293(c)(3) and 725.293(e)(3)(C) [40 CFR §§ 265.193(c)(3) and 265.193(e)(3)(iii)] by storing hazardous waste in its CMHWT, which is a double-walled tank, without providing the CMHWT with a leak detection system.

60. Therefore, Respondent failed to comply with the exemption for a hazardous waste storage permit at 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)].

61. Therefore, Respondent was not exempt from the requirements of 35 IAC Part 724 [40 CFR Part 264]; including the requirements of 35 IAC §§ 724.293(c)(3) and 724.293(e)(3)(C) [40 CFR §§ 264.193(c)(3) and 264.193(e)(3)(iii)].

62. The requirements of 35 IAC §§ 724.293(c)(3) and 724.293(e)(3)(C) [40 CFR §§ 264.193(c)(3) and 264.193(e)(3)(iii)] are identical to the requirements of 35 IAC §§ 725.293(c)(3) and 725.293(e)(3)(C) as described in paragraphs 55 and 56, above.

63. Therefore, Respondent violated 35 IAC §§ 724.293(c)(3) and 724.293(e)(3)(C) [40 CFR §§ 264.193(c)(3) and 264.193(e)(3)(iii)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count 4

Failure to Document Daily Inspections of Hazardous Waste Tank System

64. Complainant incorporates paragraphs 1 through 25 of this Complaint as though set forth in this paragraph.

65. 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] requires generators accumulating hazardous waste on-site in tank systems, without a permit, to comply with 35 IAC Part 725, Subpart J, "Tank Systems," [40 CFR Part 265, Subpart J] including 35 IAC § 725.295(a) and (c) [40 CFR § 265.195(a), (b) and (g)].

66. 35 IAC § 725.295(a)(2) and (a)(4) [40 CFR § 265.195(b)(2) and (b)(3)] requires generators storing hazardous waste in tank systems to inspect the aboveground portion of the tank system, if any, to detect corrosion or releases of waste; and the construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures to detect erosion or signs of releases of hazardous waste.

Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.295(b)(1) and (b)(3) [40 CFR § 264.195(c)(1) and (c)(2)].

67. 35 IAC § 725.295(c) [40 CFR § 265.195(g)] requires generators storing hazardous waste in tank systems to document the above-mentioned inspections. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.295(d) [40 CFR § 264.195(h)].

68. Respondent stored hazardous waste consisting of spent acids possessing the characteristics of corrosivity and toxicity at its facility in its CMHWT.

69. Respondent's CMWHT and associated ancillary equipment was completely located above-ground.

70. At the time of the inspection Respondent was not documenting inspections of its CMHWT and ancillary equipment.

71. Therefore, Respondent failed to comply with 35 IAC § 725.295(c) [40 CFR § 265.195(g)].

72. Therefore, Respondent failed to comply with the exemption for a hazardous waste storage permit at 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)].

73. Therefore, Respondent was not exempt from the requirements of 35 IAC Part 724 [40 CFR Part 264]; including the requirements of 35 IAC § 724.295(d) [40 CFR § 264.195(h)].

74. The requirements of 35 IAC § 724.295(d) [40 CFR § 264.195(h)] are identical to the requirements of 35 IAC § 725.295(c) [40 CFR § 265.195(g)] as described in paragraph 67, above.

75. Therefore, Respondent violated 35 IAC § 724.295(d) [40 CFR § 264.195(h)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count 5

Failure to Comply with Contingency Plan Requirements

76. Complainant incorporates paragraphs 1 through 25 of this Complaint as though set forth in this paragraph.

77. 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)] requires generators accumulating hazardous waste on-site, without a permit, to comply with 35 IAC Part 725, Subpart D, "Contingency Plan and Emergency Procedures," [40 CFR Part 265, Subpart D] including 35 IAC §§ 725.151 and 725.152 [40 CFR §§ 265.51 and 265.52].

78. 35 IAC § 725.151(a) [40 CFR § 265.51(a)] requires a generator of hazardous waste to have a contingency plan for his facility. The contingency plan must be 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. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.151(a) [40 CFR § 264.51(a)].

79. Minimum requirements for the hazardous waste contingency plan are provided at 35 IAC § 725.152 [40 CFR § 265.52]. Hazardous waste storage facilities are subject to identical minimum contingency plan content at 35 IAC § 724.152 [40 CFR § 264.52].

80. The contingency plan must describe the actions facility personnel must take to comply with 35 IAC §§ 725.151 and 725.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. 35 IAC § 725.152(a) [40 CFR § 265.52(a)].

81. The contingency plan must describe arrangements agreed to by local police department, fire departments, hospitals, contractors, and State and local emergency response

teams to coordinate emergency services, pursuant to 35 IAC § 725.137. 35 IAC § 725.152(c) [40 CFR § 265.52(c)].

82. The contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. 35 IAC § 725.152(d) [40 CFR § 265.52(d)].

83. The contingency plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment) where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities. 35 IAC § 725.152(e) [40 CFR § 265.52(e)].

84. The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires). 35 IAC § 725.152(f) [40 CFR § 265.52(f)].

85. If the owner or operator has already prepared a federal Spill Prevention Control and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or 300, or some other emergency or contingency plan, it needs only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of 35 IAC Part 725. 35 IAC § 725.152(b) [40 CFR § 265.52(b)].

86. At the time of the inspection, Respondent's SPCC Plan did not describe arrangements agreed to by local police department, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to 35 IAC § 725.137.

87. At the time of the inspection, Respondent's SPCC Plan did not include the home addresses of the primary and alternate emergency coordinators, and the home telephone number of the alternate emergency coordinator.

88. At the time of the inspection, Respondent's list of emergency equipment in its SPCC Plan did not include the location, physical description, and a brief outline of the capabilities of each item on the emergency equipment list.

89. At the time of the inspection, Respondent's SPCC Plan did not include an evacuation plan for facility personnel that described the signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes.

90. Respondent therefore failed to comply with 35 IAC §§ 725.152(c), (d), (e) and (f) [40 CFR §§ 265.52(c), (d), (e) and (f)].

91. Therefore, Respondent failed to comply with the exemption for a hazardous waste storage permit at 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)].

92. Therefore, Respondent was not exempt from the requirements of 35 IAC Part 724 [40 CFR Part 264]; including the requirements of 35 IAC §§ 724.152(c), (d), (e) and (f) [40 CFR §§ 264.52(c), (d), (e) and (f)].

93. The requirements of 35 IAC 35 IAC §§ 724.152(c), (d), (e) and (f) [40 CFR §§ 264.52(c), (d), (e) and (f)] are identical to the requirements of 35 IAC §§ 725.152(c), (d), (e) and (f) [40 CFR §§ 265.52(c), (d), (e) and (f)] as described in paragraphs 80 through 84, above.

94. Therefore, Respondent violated 35 IAC §§ 724.152(c), (d), (e) and (f) [40 CFR §§ 264.52(c), (d), (e) and (f)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count 6

Inadequate RCRA Training Program and Related Documentation

95. Complainant incorporates paragraphs 1 through 25 of this Complaint as though set forth in this paragraph.

96. 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)] requires generators accumulating hazardous waste on-site, without a permit, to comply with 35 IAC § 725.116, “Personnel Training” [40 CFR § 265.16].

97. 35 IAC § 725.116(a) [40 CFR § 265.16(a)] requires that facility personnel successfully complete 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 35 IAC Part 725 [40 CFR Part 265]. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including the following where applicable: (A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment; (B) Key parameters for automatic waste feed cut-off systems; (C) Communications or alarm systems; (D)

Response to fires or explosions; (E) Response to groundwater contamination incidents; and (F) Shutdown of operations. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.116(a) [40 CFR § 264.16(a)].

98. 35 IAC § 725.116(b) [40 CFR § 265.116(b)] requires that facility personnel successfully complete this training program six months after the date of their employment or assignment to a facility or to a new position at a facility. Employees must not work in unsupervised positions until they have completed the training requirements. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.116(b) [40 CFR § 264.16(b)].

99. 35 IAC § 725.116(c) [40 CFR § 265.16(c)] requires that facility personnel take part in an annual review of the initial training. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.116(c) [40 CFR § 264.16(c)].

100. 35 IAC § 725.116(d) [40 CFR § 265.16(d)] requires the owner or operator to maintain the following documents and records at the facility:

- (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
- (2) A written job description for each position related to hazardous waste management (this description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education or other qualifications, and duties of employees assigned to each position);

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management; and

(4) Records that document that the training or job experience required under 35 IAC § 725.116 (a), (b), and (c) [40 CFR § 265.16(a), (b) and (c)] has been given to, and completed by, facility personnel.

Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.116(d) [40 CFR § 264.16(d)].

101. 35 IAC § 725.116(e) [40 CFR § 265.16(e)] requires that training records on current personnel be kept until closure of the facility and that training records on former employees be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.116(e) [40 CFR § 264.16(e)].

102. Respondent is unable to demonstrate that two of its employees, Mike Noetl and Thomas Hackler, who served as Emergency Coordinators for at least the years of 2004 through 2007, received annual training relative to their duties as Emergency Coordinators during those years.

103. Respondent is unable to demonstrate that an additional employee, Daniel Moreno, identified as having duties regarding hazardous waste management, received training in the years 2004 and 2005.

104. At the time of the inspection, Respondent did not have a record that listed all positions at its facility with duties involving hazardous waste management and the names of the persons filling those positions.

105. At the time of the inspection, Respondent did not have a record that included a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management.

106. Therefore, Respondent failed to comply with 35 IAC §§ 725.116(c) and (d) [40 CFR §§ 265.16(c) through (d)].

107. Therefore, Respondent failed to comply with the permit exemption requirements of 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)].

108. Therefore, Respondent was not exempt from the requirement to comply with 35 IAC Part 724 [40 CFR Part 724], including the requirements of 35 IAC § 724.116 [40 CFR § 264.16].

109. The requirements of 35 IAC §§ 724.116 (c) and (d) [40 CFR §§ (c) and (d)] are identical to those of 35 IAC § 725.116 (c) and (d) [40 CFR § 265.16 (c) and (d)].

110. Therefore, Respondent violated 35 IAC § 724.116 (c) and (d) [40 CFR § 264.16(a), (b), (c) and (d)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Count 7

Failure to Close Container of Hazardous Waste

111. Complainant incorporates paragraphs 1 through 25 of this Complaint as though set forth in this paragraph.

112. 35 IAC §§ 722.134(a)(1)(A) and 722.134(c)(1)(A) [40 CFR §§ 262.34(a)(1)(i) and 262.34(c)(1)(i)] requires generators accumulating hazardous waste on-site without a permit in containers to comply with 35 IAC § 725.273(a) [40 CFR § 265.173(a)].

113. 35 IAC § 725.273(a) [40 CFR § 265.173(a)], “Management of Containers,” requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. Hazardous waste storage facilities are subject to an identical requirement at 35 IAC § 724.273(a) [40 CFR § 264.173(a)].

114. At the time of the inspection, MIL was storing hazardous waste solvents generated from its painting operations in a 55-gallon container located in a metal cabinet near one of its paint booths.

115. At the time of the inspection, the container was open at a time when waste was not being added to or removed from the container.

116. Therefore, Respondent failed to comply with 35 IAC § 725.273(a) [40 CFR § 265.173(a)]

117. Therefore, Respondent failed to comply with the permit exemption conditions of 35 IAC §§ 722.134(a)(1)(A) and 722.134(c)(1)(A) [40 CFR §§ 262.34(a)(1)(i) and 262.34(c)(1)(i)].

118. Therefore, Respondent was not exempt from having to comply with 35 IAC Part 724 [40 CFR Part 264], including 35 IAC § 724.273(a) [40 CFR § 264.173(a)].

119. The requirements of 35 IAC § 724.273(a) [40 CFR § 264.173(a)] are identical to those of 35 IAC § 725.273(a) [40 CFR § 265.173(a)].

120. Therefore, Respondent violated 35 IAC § 724.273(a) [40 CFR § 264.173(a)] and is subject to an order for civil penalties under Section 3008 of RCRA, 42 U.S.C. § 6928.

Civil Penalties

121. 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 \$62,031.20. 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. Complainant also considered U.S. EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

122. Within 30 days after the effective date of this CAFO, Respondent must pay a \$62,031.20 civil penalty for the RCRA violations. Respondent may pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

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

The check must state the case title, the docket number of this CAFO and the billing document number.

123. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Todd Brown (LR-8J)
RCRA Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

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

125. 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.

Compliance Order

126. Based on the foregoing, Respondent is hereby ordered-- pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules-- to comply with the following requirements immediately upon the effective date of this Order:

A. Respondent will ensure that all its employees successfully complete 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 35 IAC Part 725 [40 CFR Part 265], in accordance with 35 IAC § 725.116(a) [40 CFR § 265.16(a)]. This program must be directed by a person trained in hazardous waste

management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including the following where applicable: (i) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to groundwater contamination incidents; and (vi) Shutdown of operations.

B. Respondent will ensure that employees successfully complete this training program within six months after the date of their employment or assignment to a facility or to a new position at a facility, in accordance with 35 IAC § 725.116(b) [40 CFR § 265.16(b)]. Respondent will ensure that employees not work in unsupervised positions until they have completed the training requirements.

C. Respondent will ensure that its employees participate in an annual review of this training, in accordance with 35 IAC § 725.116(c) [40 CFR § 265.16(c)].

D. Respondent will maintain the following documents at its facility with respect to this training: (i) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (ii) A written job description for each position related to hazardous waste management (this description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the

requisite skill, education or other qualifications, and duties of employees assigned to each position); (iii) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management; and (iv) Records that document that the training or job experience required under 35 IAC § 725.116 (a), (b), and (c) [40 CFR § 265.16(a), (b) and (c)] has been given to, and completed by, facility personnel.

E. Respondent will maintain these records at its facility in accordance with 35 IAC § 725.116(e) [40 CFR § 265.16(e)].

F. Respondent will submit copies of the documents described under items (i) and (iii) in subparagraph D, above, to the EPA within 30 calendar days of the effective date of this Order.

G. Respondent will close all containers holding hazardous waste while stored on site, except when it is necessary to add or remove waste, in accordance with 35 IAC § 725.273(a) [40 CFR § 265.173(a)].

H. Respondent will ensure that all containers and tanks used for the accumulation or storage of hazardous waste are labeled with the words, "Hazardous Waste," in accordance with 35 IAC §§ 722.134(a)(3) and 722.134(c)(1)(B) [40 CFR § 262.34(a)(3) and 262.34(c)(1)(ii)].

I. If Respondent has not taken or completed any requirement of this Order, Respondent shall notify EPA of the failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.

J. Respondent shall submit all reports, submissions, and notifications required by this Order the United States Environmental Protection Agency, Region 5,

Land and Chemicals Division, RCRA Branch, Attention: Todd C. Brown (LR-8J), 77
West Jackson Boulevard, Chicago, Illinois 60604-3590.

General Provisions

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

128. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

130. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, the U.S. EPA's RCRA Civil Penalty Policy, and the U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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


132. 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.

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

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


For Magnetic Inspection Laboratory, Incorporated, Respondent

9/28/09
Date


Robert L. Schiewe, President
Magnetic Inspection Laboratory, Inc.

For the United States Environmental Protection Agency, Complainant

September 29, 2009
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Magnetic Inspection Laboratory, Incorporated
Docket No. RCRA-05-2009-0024

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.

9/29/09
Date

Walter W. Kovalevich
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
SEP 30 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

SEP 29 2009

OFFICE OF REGIONAL
COUNSEL

CASE NAME: Magnetic Inspection Laboratory
DOCKET NO: RCRA-05-2009-0024

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. Robert L. Schiewe, President
Magnetic Inspection Laboratory, Inc.
1401 Greenleaf Avenue
Elk Grove Village, IL 60007

Return Receipt #:

RECEIVED
SEP 30 2009

And via First Class Mail to:

Todd Marvel
Illinois Environmental Protection Agency
RCRA Coordinator
1021 North Grand Ave, East
Springfield, Illinois 62702

REGIONAL HEARING CLERK
USEPA
REGION 5

Dated: 9/30/09

Mary C. Overington for Margaret Gray
Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division - RCRA Branch
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5028