



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

REPLY TO THE ATTENTION OF:

LR-8J

DEC 03 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Myers
Claire Manufacturing Company, Incorporated
PLZ Holding Corporation
105 Bolte Lane
St. Clair, Missouri 63077

Re: Consent Agreement and Final Order
Claire Manufacturing Company, Incorporated
Docket No: **RCRA-05-2010-0006**

Dear Mr. Myers:

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 DEC 15 2009 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$44,200 in the manner prescribed in paragraph 100 of the CAFO, and reference all checks with the number **BD2751042R007** and docket number **RCRA-05-2010-0006**. 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 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)
Frank H. Hackman, Sonnenschein, Nath and Rosenthal LLP

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.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Claire Manufacturing Company, Inc.,)
Addison, Illinois,)
)
Respondent.)
_____)

Docket No. RCRA-05-2010-0006
Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

RECEIVED
DEC 15 2009

Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency (EPA), Region 5.

3. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Claire Manufacturing Company, Inc., a corporation doing business in the State of Illinois.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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 EPA by Sections 3006(b) and 3008 of RCRA; 42 U.S.C. §§ 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. Respondent retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this CAFO, the validity of the factual allegations contained herein.

11. Respondent consents to the issuance of the compliance order and certifies that it will implement the tasks in paragraphs 104 through 110 according to the schedule and terms of the compliance order in order to attain full compliance with RCRA, 42 U.S.C. §§ 6901 – 6939e and the regulations at 40 C.F.R. §§ 260.1 – 279.82.

Statutory and Regulatory Background

12. 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 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 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), 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. The Administrator of 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 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, 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, through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an "owner" or "operator," as those terms are defined by 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 500 Vista Avenue, Addison, Illinois 60101 (Facility).

18. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

19. Respondent's Facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

20. At all times relevant to this Complaint, Respondent manufactured aerosol packaged chemical products using three process lines: "A" line to package soap and water based products; "B" Line to package emollient based products such as oven cleaners and furniture polishes; and "C" Line to package products such as adhesives and undercoat products.

21. During the manufacturing process, Respondent generated solvent waste, which Respondent collected and stored in hazardous waste containers at or near the point of generation at the Facility.

22. During the manufacturing process, Respondent used a pneumatic pump to move solvent waste from the process lines through ancillary pipes to two hazardous waste storage tanks in the hazardous waste storage area of the Facility.

23. During the manufacturing process, Respondent generated waste aerosol cans that typically contain solvent waste, which Respondent collected in totes and stored in the hazardous

waste storage area of the Facility.

24. At all times relevant to this Complaint, Respondent held solvent waste (discarded material) and waste aerosol cans (discarded material), for temporary periods in containers, tanks and/or totes before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

25. Respondent characterized its solvent waste and waste aerosol cans using hazardous waste codes D001 (ignitability characteristic), D039 (tetrachloroethylene), F002 (spent halogenated solvents), F003 (spent non-halogenated solvents), F005 (spent non-halogenated solvents), D035 (methyl ethyl ketone), and D040 (trichloroethylene).

26. Respondent stored, transported, disposed of, or otherwise handled its solvent waste and waste aerosol cans in “containers” and/or “tanks” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

27. At all times relevant to this Complaint, Respondent’s solvent waste and waste aerosol cans were “solid waste” as that term is defined under 35 IAC § 721.102 and 40 C.F.R. § 261.2.

28. At all times relevant to this Complaint, Respondent’s solvent waste and aerosol cans were “hazardous waste” as that term is defined under 35 IAC § 721.103 and 40 C.F.R. § 261.3.

29. At all times relevant to this Complaint, Respondent’s holding of solvent waste and/or waste aerosol cans in satellite containers, tanks and/or totes constituted hazardous waste “storage,” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

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

31. Respondent generated and managed hazardous waste at the Facility after

November 19, 1980, and is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, or the analogous Illinois regulations as part of the applicable state hazardous waste management program for the State of Illinois, or both.

32. On September 23, 2008, EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

33. On December 16, 2008, EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

34. In letters dated January 12, 2009, and April 28, 2009, PLZ Holding Corporation, on behalf of Respondent, submitted to EPA written responses to the Notice of Violation.

35. At all times relevant to this Complaint, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.

36. On or about March 1, 1994, through March 1, 2008, Respondent submitted Biennial Reports to the Illinois Pollution Control Agency for the Facility and identified itself as a large quantity generator in these reports.

37. During the inspection, Respondent's representative stated that hazardous waste is sent to disposal facilities approximately twice a month; with a shipment of approximately 5,000 gallons of hazardous waste shipped every two weeks using a tanker truck.

38. Respondent reported in its 2007 Comprehensive Biennial Report that it generated over 924,000 pounds of hazardous waste organic liquids with the characteristic codes of D001, D035, F002, F003 and F005, an average of approximately 7,700 pounds per month.

39. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

40. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste generated on site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

41. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to 35 IAC Part 724 [40 C.F.R. Part 264] and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121. [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13]. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

42. At all times relevant to this Complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

43. Similarly, the failure to comply with any of the conditions of 35 IAC § 722.134 subjects the generator of hazardous waste to the requirements of 35 IAC Part 724 [40 C.F.R. Part 264] and the permit requirements of 35 IAC §§ 703.121, 703.180 and 705.121.

Count 1 – Preparedness and Prevention

44. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

45. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste that is generated on-site for 90 days or less without having a hazardous waste permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

46. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must maintain aisle space to allow the un-obstructive movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in accordance with 35 IAC § 725.134(a)(4) and by reference Subpart C of 35 IAC Part 725, specifically 35 IAC § 725. 135 [40 C.F.R. § 262.34(a)(4) and by reference Subpart C of 40 C.F.R. § 265, specifically 40 C.F.R. § 265.35].

47. At the time of the inspection, the EPA inspector was unable to move between the containers of hazardous waste in the hazardous waste storage area, and there was not adequate aisle space for the un-obstructive movement of personnel in the hazardous waste storage area.

48. At the time of the inspection, Respondent failed to provide EPA with records documenting either attempts to make response arrangements with local authorities, or refusals from authorities to make arrangement in the operating record as required by 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)] and by reference 35 IAC § 725.137(b) [40 C.F.R. § 265.37(b)] without obtaining or applying for a permit.

49. As set forth above, Respondent did not meet all of the applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, as a result, Respondent became an operator of a hazardous waste storage facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the requirements of 35 IAC § 703.121, 703.180, and 705.121 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 2: Contingency Plan and Emergency Procedures

50. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

51. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste that is generated on-site for 90 days or less without having a hazardous waste permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

52. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

53. In order for a generator of hazardous waste to maintain its exemption from the requirement to apply for and obtain an operating permit or interim status, it must comply with 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)] and by reference, Subpart D of 35 IAC Part 725 specifically the contingency plan requirements of 35 IAC §§ 725.150 through 725.156 [40 C.F.R. §§ 265.50 through 265.56].

54. At the time of the inspection, Respondent failed to provide EPA an evacuation plan as part of its contingency plan as required by 35 IAC § 722.134(a) (4) [40 C.F.R. § 262.34(a) (4)] and by reference 35 IAC § 725.152(f) [40 C.F.R. § 265.52(f)] without obtaining or applying for a permit.

55. At the time of the inspection, Respondent had not updated its contingency plan to reflect the change in emergency coordinators as required by 35 IAC § 722.134(a) (4) [40 C.F.R. § 262.34(a) (4)] and by reference 35 IAC § 725.154(d) [40 C.F.R. § 265.54(d)] without obtaining or applying for a permit.

56. At the time of the inspection, Respondent's contingency plan did not describe arrangements with the police and fire departments, hospitals, contractors and emergency response teams as required by 35 IAC § 722.134(a) (4) [40 C.F.R. § 262.34(a) (4)] and by reference 35 IAC § 725.154(c) [40 C.F.R. § 265.54(c)] without obtaining or applying for a permit.

57. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, as a result, Respondent became an operator of a hazardous waste storage facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the requirements of 35 IAC §§ 703.121, 703.180 and 705.121 [40 C.F.R. Part 265, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 3: Personnel Training

58. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

59. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste that is generated on-site without having a hazardous waste permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

60. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

61. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)], which states that the generator must keep personnel training records at the facility in accordance with 35 IAC § 722.116 [40 C.F.R. 265.16].

62. At the time of the inspection, Respondent failed to provide records that documented the completion of training for four employees responsible for hazardous waste management at the Facility in violation of 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)] and by reference 35 IAC § 722.116 [40 C.F.R. § 265.16].

63. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent became an operator of a hazardous waste storage facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 35 IAC §§ 703.121, 703.180 and 705.121 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 4: Accumulation At or Near the Point of Generation

64. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

65. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste that is generated on-site without having a hazardous waste permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

66. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

67. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must comply with 35 IAC § 722.134(c)(1) [40 C.F.R. § 262.34(c)(1)], which states that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation provided that the container holding hazardous waste is marked with the words “Hazardous Waste” or with other words that identify the contents of the containers, in accordance with 35 IAC § 722.134(c)(1)(B) [40 C.F.R. § 262.34(c)(1)(ii)] and provided that the container is always closed during storage, except when it is necessary to add or remove waste, in accordance with 35 IAC § 725.273(a) [40 C.F.R. § 265.173(a)].

68. At the time of the inspection, Respondent had one 55-gallon container containing hazardous waste near Respondents “A” process line that could not be closed and one 55-gallon container of hazardous waste near Respondent’s “B” process line that could not be closed.

69. At the time of the inspection, Respondent had one 55-gallon container of hazardous waste, near the “A” process line, that was not labeled or marked with the words, “Hazardous Waste.”

70. As set forth above, Respondent did not meet all of the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent was an operator of a hazardous waste storage facility without a permit or interim status in

violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 35 IAC §§ 703.121, 703.180 and 705.121 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 5: Tank Systems

71. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

72. Pursuant to 35 IAC § 722.134 [40 C.F.R. § 262.34], however, and subject to certain exceptions, a generator may accumulate hazardous waste that is generated on-site without having a hazardous waste permit or interim status, provided that the generator complies with all applicable conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34].

73. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

74. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must meet the requirements of 35 IAC § 722.134(a)(1)(B) and by reference Subpart J of 35 IAC Part 725 specifically § 725.291(a) or § 725.292 (a) and (g) [40 C.F.R. § 262.34 (a)(1)(iii) and by reference Subpart J of 40 C.F.R. Part 35 specifically 40 C.F.R. § 265.191 or § 265.192], which states that if the waste is placed in tanks then the generator must obtain and keep on file at the facility a written tank assessment reviewed and certified by an independent, qualified, registered professional engineer attesting that the system had sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.

75. At the time of the inspection, Respondent was unable to provide EPA a written hazardous waste storage tank system assessment of its aboveground storage tank labeled as Tank

No. 23 located on the west side of the main building at the Facility, which has been in use at the Facility since on or about 1989.

76. Respondent failed to obtain a written tank assessment prior to the use of the hazardous waste storage tank system, which has been in use since on or about 1989.

77. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must meet the requirements of 35 IAC § 722.134 [40 C.F.R. § 262.34] and by reference 35 IAC § 725.293(a)(1) or (2), 35 IAC § 725.293(b) and 35 IAC § 725.293(c)(1) [40 C.F.R. §§ 265.193(a)(1) or (2), 265.193(b) and 265.193(c)(1)], which state that if the waste is placed in tanks then the tank system must be provided with secondary containment, which must be constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and have sufficient strength and thickness to prevent failure.

78. At the time of the inspection, Respondent's secondary containment system for its hazardous waste storage tank system consisted of concrete.

79. Concrete is not sufficient in and of itself to prevent migration of hazardous waste or hazardous waste constituents to the soil, groundwater or surface water.

80. At the time of the inspection, Respondent failed to provide a liner over the concrete of its secondary containment system.

81. Respondent's concrete containment system has not had a liner since the hazardous waste storage tank system was placed into operation.

82. Respondent's hazardous waste storage tank system has been in operation since on or about 1989.

83. 35 IAC § 722.134 [40 C.F.R. § 262.34] states that a generator may accumulate hazardous waste for 90 days or less without a permit provided that the waste is placed in tanks and the tank system 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, in accordance with IAC § 725.293(c)(3) [40 C.F.R. § 265.193(c)(3)].

84. At the time of the inspection, Respondent failed to have a leak detection system for its hazardous waste storage tank system.

85. Respondent failed to have a leak detection system since the hazardous waste storage tank system was placed in operation.

86. Respondent's hazardous waste storage tank system has been in operation since on or 1989.

87. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage 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, and the regulations found at 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 6: Accumulation Time

88. Complainant incorporates paragraphs 1 through 43 of this Complaint as though set forth in this paragraph.

89. Except as otherwise provided, a large quantity generator may, for 90 days or less, accumulate and/or conduct treatment of hazardous waste that is generated on-site without a

hazardous waste permit, provided that the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are met.

90. If the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

91. 35 IAC § 722.134(b) [40 C.F.R. 262.34(b)] states that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC Parts 724 and 725 [40 C.F.R. Parts 264 and 265] and the permit requirements of 35 IAC Parts 702 and 703 [40 C.F.R. Part 270].

92. At the time of the inspection, Respondent had on site six containers of hazardous waste in its hazardous waste accumulation area that exceeded the 90 day accumulation limit.

93. At all times relevant to this Complaint, Respondent has not been granted an extension to accumulate hazardous waste for more than 90 days.

94. 35 IAC § 722.134 [40 C.F.R. § 262.34] allows that a generator may accumulate hazardous waste for 90 days or less without a permit provided that the date upon which each period of accumulation began is clearly marked and visible for inspection on each container, in accordance with 35 IAC § 722.134(a)(2) [40 C.F.R. § 262.34(a)(2)].

95. At the time of the inspection, Respondent had on site six containers of hazardous waste in its hazardous waste accumulation area that were not marked with the date upon which the period of accumulation began for each container.

96. 35 IAC § 722.134 [40 C.F.R. § 262.34] allows that a generator may accumulate hazardous waste for 90 days or less without a permit provided that while being accumulated on-

site, each container is labeled or marked with the words, "Hazardous Waste" in accordance with 35 IAC § 722.134(a)(3) [40 C.F.R. § 262.34(a)(3)].

97. At the time of the inspection, Respondent had on-site two containers of hazardous waste in its less-than ninety day hazardous waste accumulation area that were not labeled or marked with the words, "Hazardous Waste."

98. As set forth above, Respondent did not meet the conditions of 35 IAC § 722.134 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste; therefore, Respondent became an operator of a hazardous waste facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 35 IAC § 703.180 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Civil Penalty

99. 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 \$44,200. 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 EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

100. Within 30 days after the effective date of this CAFO, Respondent must pay a \$44,200 civil penalty for the RCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

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

101. 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-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Daniel Chackakis (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

103. 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

104. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b) to comply with the following requirements immediately upon the effective date of this Order:

105. Respondent shall immediately achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by Illinois Title 35 (40 C.F.R. Part 262).

106. Respondent shall install a liner for the secondary containment system of the hazardous waste storage tank system by December 1, 2009.

107. Within 10 days following the effective date of this Order, Respondent shall cease storing hazardous waste in the aboveground storage tank labeled Tank No. 23 located on the west side of the main building at the Facility and begin closure of Tank No. 23 in accordance with 35 IAC § 725.297 [40 C.F.R. § 265.197]. No later than December 1, 2009, Respondent shall complete closure of Tank No. 23 and provide a written certification to EPA stating that closure was performed in accordance with the 35 IAC § 725.297 [40 C.F.R. § 265.197].

108. Respondent shall notify EPA in writing by December 15, 2009, certifying compliance with the Order.

109. Respondent shall submit all reports, submissions, and notifications required by this Order the U. S. Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Daniel Chachakis (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

110. Respondent agrees to provide access to the Facility to EPA at all reasonable times to monitor Respondent's implementation of and compliance with the terms of this CAFO. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

General Provisions

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

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

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

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

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

116. 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.

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

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

Claire Manufacturing Company, Incorporated, Respondent

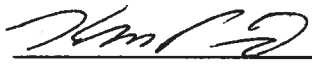
11/12/09
Date



Claire Manufacturing Company

United States Environmental Protection Agency, Complainant

12.4.09
Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Claire Manufacturing Company
Docket No. RCRA-05-2010-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12/4/09
Date

Walter W. Handberg
Bharat Mathur *for*
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
DEC 15 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

U.S. ENVIRONMENTAL
PROTECTION AGENCY
NOV 18 2009
OFFICE OF REGIONAL
COUNSEL

CASE NAME: Claire Manufacturing Company
DOCKET NO: RCRA-05-2010-0006

RECEIVED
DEC 15 2009

CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 V, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Gary Myers
Claire Manufacturing Company, Incorporated
PLZ Holding Corporation
105 Bolte Lane
St. Claire, MO 63077

Certified Mail Receipt #

Dated: Dec 15, 2009



Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency

Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590