



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 10, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

KMK Service Corp
As Registered Agent for
FBF Nuclear Container, LLC
One East Fourth Street, 14th Floor
Cincinnati, Ohio 45202

Mr. M. David Berger
As Registered Agent for
Metal Solutions Design & Fabrication, LLC
215 Main Street
Dayton, Kentucky 41074

Mr. M. David Berger
215 Main Street
Dayton, Kentucky 41074

Dear Sirs:

The earlier Complaint and Compliance Order (Complaint) filed with the Regional Hearing Clerk and served on you in the Matter of FBF Nuclear Container, LLC, and Metal Solutions Design & Fabrication, LLC and M. David Berger (the "Respondents") was missing certain pages. A full and complete Complaint has been filed on this date with the Regional Hearing Clerk. Enclosed is a copy of that Complaint.

If you have any questions or desire to request an informal conference for the purpose of settlement, please contact me at 404-562-9567.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Newton".

Michael T. Newton
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4008
)	
FBF Nuclear Container, LLC)	Proceeding under Section 3008(a)
and)	of the Resource Conservation and
Metal Solutions Design & Fabrication, LLC)	Recovery Act, 42 U.S.C. § 6928(a)
and)	
M. David Berger)	
)	
Respondents.)	
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HEARING CLERK
EPA REGION IV

COMPLAINT AND COMPLIANCE ORDER

I. Nature Of The Action

This is a civil administrative enforcement action seeking civil penalties pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), for alleged violations of RCRA and the Tennessee Hazardous Waste Management Act of 1977, as amended (THWMA), Tennessee Code Annotated (T.C.A.) §§ 68-212-101 through 121, and the regulations promulgated pursuant thereto, set forth in Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 279, and in the Tennessee Department of Environment and Conservation (TDEC) Rules, Chapter 1200-1-11.

II. The Parties

(1) Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant Complaint and Compliance Order (Order) pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.

(2) Respondent FBF is FBF Nuclear Container, LLC, a company organized under the laws of the State of Ohio and, at all times relevant to this Order, was doing business in the State of Tennessee at 115 Franklin Road, Oak Ridge, Tennessee 37830.

(3) Respondent Metal Solutions is Metal Solutions Design & Fabrication, LLC, a company organized under the laws of the State of Ohio and until June 14, 2007, was operating without corporate authority in Kentucky. On June 14, 2007, Respondent Metal Solutions Design & Fabrication, LLC applied for a certificate of authority to do business in Kentucky at 215 Main Street, Dayton, Kentucky 41074.

(4) Respondent Metal Solutions succeeded to the business being conducted by Respondent FBF at the time that the manufacturing operation was moved from Tennessee.

(5) Respondent Berger is M. David Berger a principal in both FBF Nuclear Container, LLC and Metal Solutions Design & Fabrication, LLC.

(6) Respondent Berger was the General Manager and Plant Manger for FBF Nuclear Container, LLC, while such company was operating at the Oak Ridge, Tennessee facility.

(7) Respondent Berger is the General Manager and Plant Manger for Metal Solutions Design & Fabrication, LLC, in Kentucky.

(8) Respondent FBF is a "person" as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10].

(9) Respondent Metal Solutions is a "person" as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10].

(10) Respondent Berger is a "person" as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10]

III. Jurisdiction

(11) This Order is issued pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

(12) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 5, 1985, the State of Tennessee (State) received final authorization to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The Tennessee Department of Environment and Conservation (TDEC) is charged with the statutory duty of enforcing the laws of the State relating to hazardous waste management under TDEC Rule 1200-1-11.

(13) Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State.

(14) Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Tennessee prior to filing this Order.

IV. Statutory And Regulatory Background

(15) Pursuant to § 68-212-107 of the T.C.A., regulations were promulgated at TDEC Rule 1200-1-11-.03 [40 C.F.R. Part 262] to establish requirements for generators of hazardous wastes.

(16) Pursuant to § 68-212-108 of the T.C.A., regulations were promulgated at TDEC Rule 1200-1-11-.07 [40 C.F.R. Part 270] to establish the requirement that all facilities that treat, store or dispose of hazardous wastes have a permit or interim status.

(17) Pursuant to TDEC Rule 1200-1-11-.03(1)(c)1 [40 C.F.R. § 262.12] a generator of hazardous waste must obtain an Installation Identification Number from TDEC prior to treating, storing, disposing of, transporting or offering for transportation hazardous waste.

(18) Pursuant to TDEC Rule 1200-1-11-.03(2)(a) a generator of hazardous waste must notify TDEC of its hazardous waste activities.

(19) Pursuant to TDEC Rule 1200-1-11-.03(1)(b) [40 C.F.R. § 262.11] a person who generates a solid waste must determine if that waste is a hazardous waste.

(20) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)5 [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in TDEC Rule 1200-1-11-.02(4)(b), (c) or (d)5 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with part 2 of this subparagraph of this Rule provided he:

- Complies with TDEC Rule 1200-1-11-.05(9)(b), (c) and (d)1;
- Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(21) Pursuant to TDEC Rule 1200-1-11-.05(9)(d)1 [40 C.F.R. § 265.173], incorporated by reference at Rule 1200-1-11-.03(4)(e)5(i)1, a container holding waste must always be closed during storage except when it is necessary to add or remove waste.

(22) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)6(iv)1 [40 C.F.R. § 262.34(a)(2)], where containers are used to accumulate hazardous waste, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

(23) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)6(v) [40 C.F.R. § 262.34(a)(3)], while hazardous waste is being accumulated on-site, each container and tank of such waste must be labeled or marked clearly with the words, "Hazardous Waste."

(24) Pursuant to TDEC Rule 1200-1-11-.05(3)(c)3 [40 C.F.R. § 265.32], incorporated by reference at TDEC Rule 1200-1-11-.03(4)(e)6(vi) [40 C.F.R. § 262.34(d)(4)], all facilities at which hazardous waste is generated must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require the particular kind of equipment specified:

- 3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(25) Pursuant to TDEC Rule 1200-1-11-.05(3)(e)1 [40 C.F.R. § 265.34], incorporated by reference at TDEC Rule 1200-1-11-.03(4)(e)6(vi) [40 C.F.R. § 262.34(d)(4)], whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under TDEC Rule 1200-1-11-.05(3)(c) [40 C.F.R. § 265.32].

(26) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)6(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)] the generator must have one employee who serves as the emergency coordinator.

(27) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)6(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)], the generator must post the following information next to the telephone:

- the name and telephone number of the emergency coordinator;
- the location of fire extinguishers and spill control material.

(28) Pursuant to TDEC Rule 1200-1-11-.03(4)(e)6(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)], the generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(29) Pursuant to TDEC Rule 1200-1-11-.05(9)(e) [40 C.F.R. § 265.174], incorporated by reference at TDEC Rule 1200-1-11-.03(4)(e)6(ii) [40 C.F.R. § 262.34(d)(2)], the owner or operator of the facility must inspect areas where containers are stored at least weekly.

V. Statement Of Facts Related To Respondent FBF's Management Of Hazardous Waste

(30) Respondent FBF is a "person" as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10].

(31) At all times relevant to this Order, Respondent FBF was the "owner" and/or "operator" of a "facility" located at 115 Franklin Road, Oak Ridge, Tennessee (the Facility) as those terms are defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10].

(32) Respondent FBF rented the property at which the Facility was located from Senior Flexonics, Inc. (SFI).

(33) Respondent FBF began its manufacturing operations at the Facility in September 2004 and continued such operations until on or about June 2005.

(34) On or about June 13, 2005, SFI locked Respondent FBF out of the property.

(35) At the Facility, Respondent FBF manufactured large steel boxes.

(36) During its operation of the Facility, Respondent FBF generated solid waste as defined in TDEC Rule 1200-1-11-.01(2)(a) [40 C.F.R. § 260.10].

A. Statement of Facts Related to April 14, 2005, Compliance Evaluation Inspection

(37) Representatives of the Tennessee Department of Environment and Conservation, Division of Solid Waste Management (DSWM) conducted a RCRA Compliance Evaluation Inspection on April 14, 2005 (hereinafter the "April Inspection"), at the Facility.

(38) Respondent FBF was provided with a copy of the DSWM April Inspection report by a letter dated May 6, 2005 from DSWM. The letter was mailed to Respondent FBF by certified mail.

(39) During the April Inspection, Respondent FBF employed approximately 51 persons and operated on a Monday through Thursday schedule.

(40) During the April Inspection, the DSWM representatives determined that the Respondent FBF was operating as a Small Quantity Generator, i.e., a generator of hazardous waste that generates between 100 kilograms and 1000 kilograms of hazardous waste in a month, and who never stores greater than 6,000 kilograms of hazardous waste.

(41) During the April Inspection, Respondent FBF was generating paint/solvent waste which was characteristic hazardous waste for ignitability (D001) and/or the listed hazardous waste F003.

(42) During the April Inspection, in the paint preparation area of the Facility, there was one 55-gallon "blue" drum of unknown contents. Respondent FBF considered this drum as waste.

(43) As of the April Inspection, Respondent FBF had not made a hazardous waste determination for the one 55-gallon "blue" drum of unknown contents.

(44) During the April Inspection, in the room used for paint storage and mixing (storage/mixing room), there was a 5-gallon container that was being used as a satellite accumulation container of paint/solvent waste.

(45) During the April Inspection, the storage/mixing room satellite container was not labeled with the words "hazardous waste."

(46) During the April Inspection, the storage/mixing room satellite container was not closed.

(47) During the April Inspection, in the paint booth area of the Facility, there was a 55-gallon container that was being used as a satellite accumulation container of waste paint booth filters (hereinafter the "paint booth filters satellite container").

(48) As of the April Inspection, Respondent FBF had not made a hazardous waste determination for the waste paint booth filters.

(49) During the April Inspection, in the paint booth area of the Facility, there were four 5-gallon containers that were being used as satellite accumulation containers for paint/solvent waste (hereinafter the "paint booth paint/solvent satellite containers").

(50) During the April Inspection, paint/solvent satellite containers in the paint booth area were not labeled with the words "hazardous waste."

(51) During the April Inspection, paint/solvent satellite containers in the paint booth area were not closed.

(52) During the April Inspection, the DSWM representatives inspected an area that Respondent FBF was using for storage which had a concrete pad and a roof but did not have walls. That area of the Facility was designated in the DSWM April Inspection report as the "<180-day storage area." That term will be used herein to refer to that area of the Facility.

(53) In the <180-day storage area, there were three 55-gallon drums of paint/solvent waste, four 5-gallon containers of paint/solvent waste and three 1-gallon containers of paint/solvent waste.

(54) During the April Inspection, the drums and containers listed in Paragraph 39 were not labeled with the words "hazardous waste."

(55) During the April Inspection, the drums and containers listed in Paragraph 39 were not dated with an accumulation start date.

(56) During the April Inspection, in the <180-day storage area, there were three 55-gallon drums of waste paint booth filters. Respondent FBF had not made a hazardous waste determination for these waste paint booth filters.

(57) During the April Inspection, in the garage storage shed at the Facility, there were 22 55-gallon drums of unknown waste material. Respondent FBF had not made a hazardous waste determination for these twenty-two drums of wastes.

(58) During the April Inspection, in the equipment storage area at the Facility, there was one 55-gallon drum of paint/solvent waste. This drum was not labeled with the words "hazardous waste" and was not marked with an accumulation start date.

(59) During the April Inspection, in the outside back lot area of the Facility, there was a 55-gallon drum of waste paint. The drum was not labeled with the words "hazardous waste" and was not marked with an accumulation start date.

(60) During the April Inspection, in the outside lot near the box labeling area of the Facility, there were two 5-gallon containers of unknown waste for which Respondent FBF had not made a hazardous waste determination.

(61) During the April Inspection, there were no fire extinguishers or spill control equipment located in the <180-day storage area where hazardous waste is handled.

(62) During the April Inspection, there was no communication or alarm system in the <180-day storage area where hazardous waste is handled.

(63) At the time of the April Inspection, there was no designated emergency coordinator.

(64) During the April Inspection, there was no employee designated as the emergency coordinator for the Facility.

(65) During the April inspection, the following information was not posted next to the telephone:

- the name and telephone number of the emergency coordinator;
- the location of fire extinguishers and spill control material.

(66) At the time of the April Inspection, employees handling hazardous waste had not received required training.

(67) At the time of the April Inspection, weekly inspections of the <180-day waste storage area were not being performed.

(B). Statement of Facts Related to Follow-Up Inspections

(68) Representatives of DSWM made on-site visits to the Facility on June 14, 2005 (June 14 Inspection), July 21 2005 (July 21 Inspection), and July 29, 2005 (July 29 Inspection), as follow-up inspections to the April Inspection.

(69) During the June 14 Inspection, the DSWM representatives met with a representative of Senior Flexonics, Inc. (SFI).

(70) The SFI representative confirmed that SFI had locked Respondent FBF out of the property.

(71) During the June 14 Inspection, there were no employees of Respondent FBF at the Facility.

(72) During the June 14 Inspection, waste was located in the <180-day storage area.

(73) During the June 14 Inspection, there was no communication device, fire extinguisher, or spill control equipment located in the <180-day storage area.

(74) During the July 21 Inspection, there were two employees of Respondent FBF present at the facility.

(75) During the July 21 Inspection, the waste storage conditions of the Facility were unchanged from such conditions as during the June 14 Inspection.

(76) During the July 29 Inspection, a DSWM representative met with two employees of Respondent FBF at the Facility.

VI. COUNT 1

(77) The preceding allegations are incorporated by reference as if fully set forth herein.

(78) TDEC Rule 1200-1-11-.03(1)(b) [40 C.F.R. § 262.11] requires that a person who generates a solid waste determine if that waste is a hazardous waste.

(79) At the time of the April inspection, Respondent FBF had failed to make a hazardous waste determination on:

- 1 55-gallon drum (blue) of unknown waste in the paint preparation area;
- 1 55-gallon drum of paint booth filters in the paint booth area;
- 3 55-gallon drums of paint booth filters in the roofed storage area;
- 22 55-gallon drums of unknown waste in the garage storage area; and,
- 2 5-gallon buckets of unknown waste near the box labeling area.

(80) Respondent FBF violated TDEC Rule 1200-1-11-.03(1)(b) [40 C.F.R. § 262.11] by its failure to make hazardous waste determinations.

(81) EPA considered the severity of this violation and considers it a significant violation because making a hazardous determination on the solid waste generated at a facility is the basis for all later regulatory control of hazardous waste.

VII. COUNT 2

(82) The preceding allegations are incorporated by reference as if fully set forth herein.

(83) TDEC Rule 1200-1-11-.03(4)(e)5 [40 C.F.R. § 262.34(c)(1)] provides that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation (satellite accumulation containers) if the generator marks the containers with either the words "Hazardous Waste" or with other words that identify the contents of the containers and also complies with various other requirements including TDEC Rule 1200-1-11-.05(9)(d)1 [40 C.F.R. § 265.173].

(84) TDEC Rule 1200-1-11-.05(9)(d)1 [40 C.F.R. § 265.173] requires that containers always be closed except when necessary to add or remove waste.

(85) At the time of the April inspection, Respondent FBF had failed to mark four 5-gallon satellite accumulation containers in the paint booth area and the one 5-gallon satellite accumulation container in the paint storage/mixing room were not marked with the words "hazardous waste" or other words identifying the contents of the containers.

(86) At the time of the April inspection, the four 5-gallon satellite accumulation containers in the paint booth area and the one 5-gallon satellite accumulation container in the paint storage/mixing room were not closed.

(87) Respondent FBF violated TDEC Rule 1200-1-11-.03(4)(e)5 [40 C.F.R. § 262.34(c)(1)] by its failure to mark the satellite accumulation containers with the words "hazardous waste" or other words identifying the contents of the containers and by its failure to keep the containers closed.

(88) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to mark its satellite containers with the words "hazardous waste" or other words identifying the contents of the containers and its failure to keep the containers closed increases the risk of mishandling hazardous waste and the spillage of such waste in the operation area of the facility.

VIII. COUNT 3

(89) The preceding allegations are incorporated by reference as if fully set forth herein.

(90) TDEC Rule 1200-1-11-.03(4)(e)6(iv)(I) [40 C.F.R. § 262.34(a)(2)] requires that for containers used to accumulate hazardous waste, that the date upon which each period of accumulation begins must be clearly marked by the generator and visible for inspection on each such container.

(91) At the time of the April inspection, Respondent FBF had failed to mark accumulation start dates on the following containers:

- 3 55-gallon drums of paint/solvent waste in the <180-day storage area;
- 4 5-gallon containers of paint/solvent waste in the <180-day storage area;
- 3 1-gallon container of paint/solvent waste in the <180-day storage area;
- 1 55-gallon drums of paint/solvent waste in the back lot area of the Facility; and,
- 1 55-gallon drums of paint/solvent waste in the equipment storage area.

(92) Respondent FBF violated TDEC Rule 1200-1-11-.03(4)(e)6(iv)(I) [40 C.F.R. § 262.34(a)(2)] by failure to mark the containers listed in the preceding paragraph with accumulation start dates.

(93) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to date the containers of hazardous waste increases the risk that large accumulations of hazardous waste will occur.

IX. COUNT 4

(94) The preceding factual allegations are incorporated by reference as if fully set forth herein.

(95) TDEC Rule 1200-1-11-.03(4)(e)6(v) [40 C.F.R. § 262.34(a)(3)] requires that while hazardous waste is being accumulated on-site, each container and tank of such waste must be labeled or marked clearly with the words, "Hazardous Waste" by the generator.

(96) At the time of the April inspection, Respondent FBF had failed to label or mark the following containers with the words, "Hazardous Waste:"

- 3 55-gallon drums of paint/solvent waste in the <180-day storage area;
- 4 5-gallon containers of paint/solvent waste in the <180-day storage area;
- 3 1-gallon containers of paint/solvent waste in the <180-day storage area;

- 1 55-gallon drum of paint/solvent waste in the back lot area of the Facility; and,
- 1 55-gallon drum of paint/solvent waste in the equipment storage area.

(97) Respondent FBF violated TDEC Rule 1200-1-11-.03(4)(e)6(v) [40 C.F.R. § 262.34(a)(3)] by its failure to clearly mark the containers listed in the preceding paragraph with the words, “hazardous waste.”

(98) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF’s failure to mark its stored containers with the words “hazardous waste” or other words identifying the contents of the containers increases the risk of mishandling hazardous waste at the facility.

X. COUNT 5

(99) The preceding allegations are incorporated by reference as if fully set forth herein.

(100) TDEC Rule 1200-1-11-.05(3)(c)3 [40 C.F.R. § 265.32], incorporated by reference at TDEC Rule 1200-1-11-.03(4)(e)6(vi) [40 C.F.R. § 262.34(d)(4)], requires that all facilities at which hazardous waste is generated must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require the particular kind of equipment specified:

- 3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment;

(101) At the time of the April Inspection, Respondent FBF had failed to equip the Facility with fire extinguishers and/or spill control equipment.

(102) Respondent FBF violated TDEC Rule 1200-1-11-.05(3)(c)3 [40 C.F.R. § 265.32] by its failure to have fire extinguishers and/or spill control equipment at the Facility.

(103) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF’s failure to have emergency equipment at the facility could prevent the control of an emergency.

XI. COUNT 6

(104) The preceding allegations are incorporated by reference as if fully set forth herein.

(105) TDEC Rule 1200-1-11-.05(3)(e)1 [40 C.F.R. § 265.34], incorporated by reference at Rule 1200-1-11-.03(4)(e)6(vi) [40 C.F.R. § 262.34(d)(4)], requires that whenever hazardous waste is being handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice

contact with another employee, unless such a device is not required under TDEC Rule 1200-1-11-.05(3)(c)3 [40 C.F.R. § 265.32].

(106) At the time of the April Inspection, Respondent FBF failed to have an internal alarm and/or emergency communication device in the <180-day storage area where hazardous waste is handled.

(107) Respondent FBF violated TDEC Rule 1200-1-11-.05(3)(e)1 [40 C.F.R. § 265.34] by its failure to have an internal alarm and/or emergency communication device in the <180-day storage area.

(108) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to have an alarm and/or emergency communication device in a hazardous waste storage area at the facility could allow increased risks in an emergency situation.

XII. COUNT 7

(109) The preceding allegations are incorporated by reference as if fully set forth herein.

(110) TDEC Rule 1200-1-11-.03(4)(e)6(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)] requires the generator to have one employee designated as the emergency coordinator.

(111) At the time of the April Inspection, Respondent FBF failed to have an employee designated as the emergency coordinator.

(112) Respondent FBF violated 1200-1-11-.03(4)(e)6(vii)(I) [40 C.F.R. § 262.34(d)(5)(i)] by its failure to designate an employee as the emergency coordinator.

(113) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to have emergency coordinator at the facility could allow increased risks in an emergency situation.

XIII. COUNT 8

(114) The preceding allegations are incorporated by reference as if fully set forth herein.

(115) TDEC Rule 1200-1-11-.03(4)(e)6(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)], requires the generator to post the following information next to the telephone:

- the name and telephone number of the emergency coordinator;
- the location of fire extinguishers and spill control material.

(116) At the time of the April Inspection, Respondent FBF failed to have the required information posted by the telephone.

(117) Respondent FBF violated 1200-1-11-.03(4)(e)6(vii)(II) [40 C.F.R. § 262.34(d)(5)(ii)] by its failure to post the required information by the telephone.

(118) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to have the information posted by the telephone could delay the response of emergency personnel to an emergency situation at the facility.

XIV. COUNT 9

(119) The preceding allegations are incorporated by reference as if fully set forth herein.

(120) TDEC Rule 1200-1-11-.03(4)(e)6(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)] requires the generator to adequately train all employees such that the employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(121) At the time of the April Inspection, Respondent FBF had failed to adequately train its employees in proper waste handling and emergency procedures.

(122) Respondent FBF violated TDEC Rule 1200-1-11-.03(4)(e)6(vii)(III) [40 C.F.R. § 262.34(d)(5)(iii)] by its failure to adequately train all of its employees in proper waste handling and emergency procedures.

(123) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to train its employees increases the risk that the employees will mishandle hazardous waste and the risk that the employees will not respond to emergencies properly.

XV. COUNT 10

(124) The preceding allegations are incorporated by reference as if fully set forth herein.

(125) TDEC Rule 1200-1-11-.05(9)(e) [40 C.F.R. § 265.174], incorporated by reference at Rule 1200-1-11-.03(4)(e)6(ii) [40 C.F.R. § 262.34(d)(2)], requires the owner or operator of the facility to inspect areas where containers are stored at least weekly.

(126) At the time of the April Inspection, Respondent FBF had failed to perform weekly inspections of the <180-day storage area.

(127) Respondent FBF violated TDEC Rule 1200-1-11-.05(9)(e) [40 C.F.R. § 265.174] by its failure to perform weekly inspections of the <180-day storage area.

(128) EPA considered the severity of this violation and considers it a significant violation because Respondent FBF's failure to perform weekly inspections of stored hazardous waste allows potential releases of hazardous waste to go unchecked.

X. PROPOSED CIVIL PENALTY

(129) Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and 40 C.F.R. Part 19, authorize the assessment of a civil penalty of up to THIRTY-TWO THOUSAND DOLLARS (\$32,000) per day for each violation of RCRA that occurred after March 15, 2004.

(130) Complainant proposes, subject to the receipt and evaluation of further relevant information from Respondent FBF and Respondent Metal Solutions and Respondent Berger, that a civil penalty be assessed up to the statutory maximum as stated at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g), for the violations alleged in this Order.

XI. IMMINENT AND SUBSTANTIAL ENDANGERMENT

(131) Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent FBF and Respondent Metal Solutions and Respondent Berger pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the handling, storage, treatment, transportation or disposal of solid or hazardous waste at Respondent FBF's Tennessee facility may present an imminent and substantial endangerment to human health or the environment.

XII. POTENTIAL CONSEQUENCE OF FAILURE TO COMPLY WITH THE COMPLIANCE ORDER

(132) If Respondent FBF or Respondent Metal Solutions or Respondent Berger fails to comply with any requirement of the Compliance Order or any regulation promulgated pursuant to RCRA, Respondent FBF and Respondent Metal Solutions and Respondent Berger shall be subject to liability through the imposition of additional penalties of up to THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) for each day of noncompliance in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928, and may be subject to further enforcement action, including injunction from any further treatment, storage or disposal of hazardous wastes or used oil and such other further relief as may be necessary to achieve compliance with Subtitle C of RCRA.

OPPORTUNITY TO REQUEST A HEARING

(133) As provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.15(a) and (c), Respondent FBF and Respondent Metal Solutions and Respondent Berger have the right to file an answer to the complaint and to request a hearing to contest any matter of law or material fact set forth herein and/or to contest the appropriateness of the amount of the proposed penalty. The original and one copy of Respondent FBF's and Respondent Metal

Solutions' and Respondent Berger's written Answer to this Order must be filed with the Regional Hearing Clerk within thirty (30) days after Respondent FBF's receipt of the Order. If Respondent FBF and Respondent Metal Solutions and Respondent Berger intend to also request a hearing such request must be included in the Answer.

(134) The written Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent FBF and Respondent Metal Solutions and Respondent Berger has any knowledge. Where Respondent FBF and Respondent Metal Solutions and Respondent Berger have no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer shall state (1) the circumstances or arguments which are alleged to constitute the grounds for defense; (2) the facts which Respondent FBF and Respondent Metal Solutions and Respondent Berger disputes; (3) the basis for opposing any proposed relief; and 4) whether a hearing is requested. Failure of Respondent FBF and Respondent Metal Solutions and Respondent Berger to admit, deny or explain any material factual allegation contained in the Order constitutes an admission of the allegation.

(135) If a written Answer to this Order is not filed with the Regional Hearing Clerk within thirty (30) days after Respondent FBF's and Respondent Metal Solutions' and Respondent Berger's receipt of service of this Order, Respondent FBF and Respondent Metal Solutions and Respondent Berger may be found in default pursuant to 40 C.F.R. § 22.17.

(136) For purposes of this action, default constitutes an admission of all facts alleged in the Order and a waiver of Respondent FBF's and Respondent Metal Solutions' and Respondent Berger's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. A Default Order, pursuant to 40 C.F.R. § 22.17, may thereafter be issued by the EPA Regional Administrator or the Presiding Officer, and the civil penalty proposed herein may be assessed without further proceedings.

(137) The written Answer must be sent to:

Region 4 Hearing Clerk
U.S. Environmental Protection Agency
61 Forsyth Street, SW.
Atlanta, Georgia 30303.

(138) A copy of the answer and other documents that Respondent FBF and Respondent Metal Solutions and Respondent Berger files in this action is to be sent to the following attorney

who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Michael T. Newton
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, SW.
Atlanta, Georgia 30303
404-562-9567

(139) Hearings held on the assessment of civil penalties will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. §§ 552, *et seq.*) and the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits*; 40 C.F.R. Part 22, a copy of which is included with this Order.

APPEAL RIGHTS AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

(140) The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent FBF and Respondent Metal Solutions and Respondent Berger have the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within thirty (30) days after the initial decision is served. Note that the 45-day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order), does not pertain to or extend the thirty (30) days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

(141) If Respondent FBF and Respondent Metal Solutions and Respondent Berger fails to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent FBF and Respondent Metal Solutions and Respondent Berger will have waived its rights to judicial review pursuant to 40 C.F.R. § 22.27(d).

INFORMAL SETTLEMENT CONFERENCE

(142) Whether or not Respondent FBF and Respondent Metal Solutions and Respondent Berger request a hearing, EPA encourages settlement of the proceeding consistent with the provisions of RCRA. At an informal conference, Respondent FBF and Respondent Metal Solutions and Respondent Berger may comment upon the allegations and provide whatever additional information Respondent FBF and Respondent Metal Solutions and Respondent Berger believes is relevant to the disposition of this matter, including actions taken to correct the violation or any other special circumstance Respondent FBF and Respondent Metal Solutions and Respondent Berger chooses to raise.

(143) Any request for an informal conference and other questions regarding this Order should be directed to:

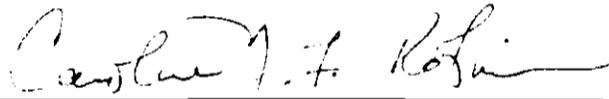
Michael T. Newton
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, SW.
Atlanta, Georgia 30303
404-562-9567

(144) The scheduling of an informal conference does not relieve Respondent FBF and Respondent Metal Solutions and Respondent Berger of the obligation to file a written Answer within thirty (30) days after Respondent FBF's and Respondent Metal Solutions' and Respondent Berger's receipt of this Order. **A request for an informal conference does not extend the thirty (30) day period in which a written Answer and request for hearing must be submitted.** The informal conference may be pursued as an alternative to or simultaneously with a request for a hearing.

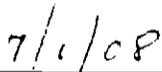
EFFECTIVE DATE

(145) This Order will become effective as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4
Complainant



Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division



Dated

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I filed by hand delivery two replacement copies of the foregoing Complaint and Compliance Order in the matter of FBF Nuclear Container, LLC, and Metal Solutions Design & Fabrication, LLC and M. David Berger, Docket No.: RCRA-04-2008-4008, with the Regional Hearing Clerk, Region 4, U.S. Environmental Protection Agency, and that I served a copy of the Complaint and Compliance Order on the addressees listed below by causing said copies to be deposited in the U.S. Mail, First Class (Certified Mail, Return Receipt Requested, postage prepaid), at Atlanta, Georgia:

KMK Service Corp
As Registered Agent for
FBF Nuclear Container, LLC
One East Fourth Street, 14th Floor
Cincinnati, Oh 45202

Mr. M. David Berger
As Registered Agent for
Metal Solutions Design & Fabrication, LLC
215 Main Street
Dayton, KY 41074

Mr. M. David Berger
215 Main Street
Dayton, KY 41074

DATE: 7/10/08


Michael T. Newton