



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 30 2009

Robert N. Steinwurtzel
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806

SUBJ: Sanders Lead Company, Inc., Consent Agreement and Final Order
Docket No. RCRA-04-2009-4001(b)

Dear Mr. Steinwurtzel,

Enclosed, please find the executed Consent Agreement and Final Order (CA/FO) resolving the violations of the Resource Conservation and Recovery Act alleged by EPA against Sanders Lead Company, Inc. As a reminder, the Effective Date of this CA/FO is the date it is filed with the Regional Hearing Clerk. Sanders Lead's application for a permit modification is due within 60 calendar days of the Effective Date of the CA/FO.

Thank you for your assistance in getting this matter resolved. If you have any questions, please call me at (404) 562-9544.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Redleaf Durbin".

Joan Redleaf Durbin
Senior Attorney
US EPA, Region 4

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	PROCEEDING UNDER SECTION
)	3008(a) OF THE RESOURCE
Sanders Lead Company, Inc.)	CONSERVATION AND RECOVERY
1 Sanders Road)	ACT, 42 U.S.C. § 6928(a)
Troy, Alabama 36079)	
EPA ID No. ALD 046 481 032)	
RESPONDENT)	DOCKET NO: RCRA-04-2009-4001(b)

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921 *et seq.* and the Alabama Hazardous Waste Management and Minimization Act (AHWMMMA), Alabama Code 1975 § 22-30-1 *et seq.* This action is seeking compliance with RCRA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270; and the AHWMMMA and regulations promulgated pursuant thereto as set forth at Alabama Administrative Code (Ala. Admin. Code) r. 335-14-1 through 335-14-9.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent (the parties) have conferred for the purposes of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, Complainant and Respondent have agreed to the execution of this CAFO and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA), Region 4.

5. Respondent is Sanders Lead Company, Inc. (the Respondent), doing business in the State of Alabama at 1 Sanders Road in Troy, Alabama.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama received final authorization to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The Alabama Department of Environmental Management (ADEM) is charged with the statutory duty of enforcing the law of the State of Alabama relating to hazardous waste management under the Code of Alabama §§ 22-22A-1 through 22-22A-16. Therefore, for the purpose of this Order, a citation hereinafter to the requirements of RCRA and 40 C.F.R. Parts 124, 270, and 260 - 265 shall constitute a citation to the equivalent requirements of the Code of Alabama and the rules and regulations promulgated thereunder where appropriate.

7. Although EPA has granted the State of Alabama 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 of Alabama.

8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice to the State of Alabama prior to issuing this CAFO. The State of Alabama concurs with the terms of this CAFO.

9. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and Section 22-30-4 of the Code of Alabama authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262 (Ala. Admin. Code r. 335-14-3).

10. Section 3004 of RCRA, 42 U.S.C. § 6924 and Section 22-30-16 of the Code of Alabama set forth the requirement for standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for this requirement are found in 40 C.F.R. Part 264 (Ala. Admin. Code r. 335-14-5).

11. Section 3005 of RCRA, 42 U.S.C. § 6925 and Section 22-30-12 of the Code of Alabama set forth the requirement for having a permit for the treatment, storage or disposal of hazardous waste. The implementing regulations for this requirement are found in 40 C.F.R. Parts 124 and 270 (Ala. Admin. Code r. 335-14-8). These standards include establishing financial responsibility as may be necessary, and are outlined in 40 C.F.R. Parts 264 and Ala. Admin. Code r. 335-14-5.

12. Pursuant to 40 C.F.R. § 264.143 [Ala. Admin. Code r. 335-14-5-.08(3)], the owner or operator of a hazardous waste management facility must establish financial assurance for closure of the facility.

13. Pursuant to 40 C.F.R. § 264.112 [Ala. Admin. Code r. 335-14-5-.07(3)], the owner or operator of a hazardous waste management facility must have a written closure plan.

14. Pursuant to 40 C.F.R. § 264.142 [Ala. Admin. Code r. 335-14-5-.08(3)] an owner or operator of a hazardous waste management facility must have a detailed written estimate in current dollars of the cost of closing the facility in accordance with 40 C.F.R. §§ 264.111 through 264.115. [Ala. Admin. Code r. 335-14-5-.07(2) through 335-14-5-.07(6)].

15. Pursuant to 40 C.F.R. § 264.112(3)(c)(3) [Ala. Admin. Code r. 335-14-5-.07(c)(3)], the owner or operator of a hazardous waste management facility must submit a written notification or request for permit modification no later than 60 days after an unexpected event has occurred which has affected the closure plan.

IV. EPA ALLEGATIONS AND DETERMINATIONS

16. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 and Ala. Admin. Code r. 335-14-1-.02.

17. Respondent is the "owner" of a "facility" located at 1 Sanders Road, Troy, Alabama, as those terms are defined in 40 C.F.R. § 260.10 and Ala. Admin. Code r. 335-14-1-.02.

18. On September 13, 2002, Respondent was issued permit number ALD046481032 by the State of Alabama, which includes provisions for closure of the containment building and the container storage area.

19. In support of its demonstration of compliance with the financial assurance requirements of RCRA and AHWMA, Sanders Lead submitted a letter from Gulf Coast Recycling, Inc., dated July 10, 2000, describing the transportation and recycling of Sanders Lead's waste inventory upon closure "for the value of the recyclable lead materials."

20. Sanders Lead's reliance on the July 10, 2000, letter from Gulf Coast Recycling is a violation of 40 C.F.R. § 264.142 and ADEM Admin. Code R. 335-14-5.08(3) as Sanders Lead's closure-cost estimate did not incorporate a transportation cost for the facility's inventory and assumed a salvage value for the inventory.

21. In addition, in connection with its application for a hazardous waste permit, Sanders Lead submitted a letter from Metalico-College Grove, Inc. stating that facility's ability to receive Sanders Lead's inventory upon closure.

22. On October 25, 2005, the Metalico-College Grove, Inc. facility was certified closed by the State of Tennessee Department of Environment and Conservation.

23. Sanders Lead did not submit notification of this unexpected event which affected the closure plan by December 25, 2005, as required by 40 C.F.R. §264.112(c)(3) [Ala. Admin. Code r. 335-14-5-.07(3)(c)(3)].

24. Respondent failed to submit a request for a permit modification within sixty days of the occurrence of an unexpected event that affected the approved closure plan and is therefore in violation of 40 C.F.R. § 264.112(c)(3) [Ala. Admin. Code r. 335-14-5-.07(3)(c)(3)].

V. TERMS OF AGREEMENT

Based on the foregoing Allegations and Determinations, the parties agree to the following:

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

26. The Respondent neither admits nor denies EPA's Allegations and Determinations set forth in Section IV above.

27. Respondent waives any right to contest the allegations and its right to appeal the attached Final Order accompanying the Consent Agreement.

28. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.

29. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO.

30. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.

31. The parties agree that compliance with the terms of this CAFO shall resolve the violations of RCRA and AHWMA alleged in this CAFO.

32. No civil penalty is assessed in this CAFO.

33. Each party will pay its own costs and attorney's fees.

VI. INJUNCTIVE RELIEF

34. Within sixty (60) calendar days of the effective date of this CAFO, Respondent must

provide ADEM with an application for a permit modification pursuant to 40 C.F.R. § 270.42(a) and Ala. Admin. Code r. 335-14-8-.04(3). A copy of the permit modification application shall also be provided to EPA Region 4. The permit modification shall include a revised closure-cost estimate that incorporates a transportation cost for removing the maximum waste inventory on site as detailed in Respondent's Hazardous Waste Facility Permit, No. ALD046481032 issued September 12, 2002. (Respondent's storage capacity consists of 50,000 cubic yards of lead plates and groups, and 8,800 gallons of other recyclable lead-bearing materials. Cubic yards shall be converted to pounds using a conversion factor of 1.33 tons/cubic yard to calculate the waste inventory.) The updated closure-cost estimate shall state the distance (in miles) to a permitted secondary lead smelter that can recycle Sanders Lead's waste inventory.

The revised closure-cost estimate shall also include a per-mile cost based on quotes from licensed hazardous waste transporters assuming 50,000 pounds per load. The application for permit modification shall be based on the cost of \$2.17 per mile reflective of the transportation quotes included in letters from J&M Tank Lines (dated June 16, 2008), and Godwin Material Service, Inc. (dated June 16, 2008), and provisions for transporting Sanders Lead's inventory to a permitted secondary lead smelter.

35. The permit modification shall also request an extension of the time allowed for closure to over a period of 20 months.

36. Respondent agrees to obtain new transportation quotes annually, concurrent with its annual closure-cost estimate inflationary adjustment that is required by 40 C.F.R. 264.142(b) [Ala. Admin. Code r. 335-14-5-.08(3)(b)], for purposes of its closure-cost estimate. Respondent shall send a copy of each yearly renewal to ADEM and EPA.

37. All submissions required by this CAFO shall be sent to:

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:
Mr. Jeff Kitchens, Chief
Industrial Hazardous Waste Branch
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

VII. RESERVATION OF RIGHTS

38. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violations of any applicable provision of law except for those violations specifically alleged in this CAFO.

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

40. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

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

42. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

43. The provisions of this CAFO shall be deemed satisfied upon a determination by Complainant that Respondent has fully implemented the actions required in this CAFO.

VIII. PARTIES BOUND

44. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting on behalf of the Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

45. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

46. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to this CAFO.

IX. OTHER APPLICABLE LAWS

47. All actions required to be taken pursuant to the CAFO shall be undertaken in accordance with the requirements of all applicable local, state and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

48. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin
Senior Attorney
OEA - 13th Floor
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9544

49. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is authorized to receive service for the Respondent in this proceeding:

Robert N. Steinwurtzel
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806

XI. SEVERABILITY

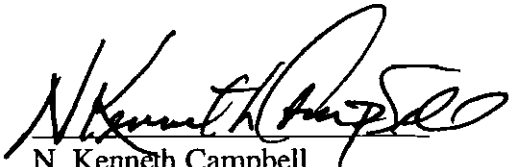
50. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

51. The effective date of this CAFO shall be the date on which the fully executed CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

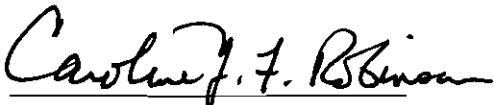
For the Respondent



N. Kenneth Campbell
Executive Vice President
Sanders Lead Company

Date: 3-18-09

For the U.S. Environmental Protection Agency



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

Date: 3/25/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	PROCEEDING UNDER SECTION
)	3008(a) OF THE RESOURCE
Sanders Lead Company, Inc.)	CONSERVATION AND RECOVERY
1 Sanders Road)	ACT, 42 U.S.C. § 6928(a)
Troy, Alabama 36079)	
EPA ID No. ALD 046 481 032)	
RESPONDENT)	DOCKET NO: RCRA-04-2009-4001(b)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *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. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 26th day of March, 2009

BY: J. Pett Gln
A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of **Sanders Lead Company, Inc.**, Docket Number: RCRA-04-2009-4001(b), on ~~MAR 30 2009~~ ^{MAR 30 2009} 2009, and on ~~MAR 30 2009~~ 2009, served the parties listed below in the manner indicated:

Joan Redleaf Durbin
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

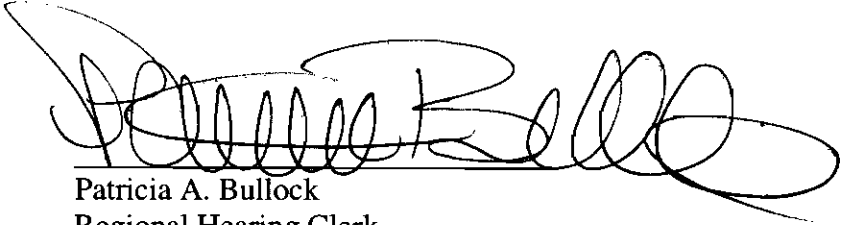
(Via EPA's internal mail)

Robert N. Steinwurtzel
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806

(Via Certified Mail - Return Receipt Requested)

Date:

3-30-09


Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511