



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

SEP 1 2009

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL – 7001 0320 0005 8915 6029
RETURN RECEIPT REQUESTED

Mr. Randy Flynn
Site Leader
Alcan Packaging
Post Office Box 247
Boscobel, Wisconsin 53805

Re: Consent Agreement and Final Order
Pechinery Plastic Packaging, Inc.
907 Second Street, Boscobel, Wisconsin 53805
EPA ID No.: WIR000001552
Docket No.: RCRA RCRA-05-2009-0016

Mr. Flynn:

Enclosed, please find an original signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on SEP 1 1 2009, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$7,200 in the manner prescribed in paragraphs 47-51 of the CAFO, and reference all checks with the number BD 2750942R010 and docket number RCRA RCRA-05-2009-0016.

Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Security and Exchanged Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you for your cooperation in resolving this matter.

Sincerely,

Willie Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

Cc: Cinde English, WDNR South Central Region in Fitchburg, WI (w/CAFO)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

PECHINEY PLASTIC PACKAGING, INC.,)
BOSCOBEL, WISCONSIN,)

RESPONDENT.)
_____)

Docket No.: RCRA-05-2009-0016

Proceeding to Assess a
Civil Penalty under Section
3008(a) of the Resource
Conservation and Recovery
Act, 42 U.S.C. § 6928(a)

RECEIVED
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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, 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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Pechiney Plastic Packaging, Inc., a Delaware corporation doing business in the State of Wisconsin.
5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be

commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6939e and the regulations at 40 C.F.R. §§ 260.1 – 279.82.

Statutory and Regulatory Background

12. U.S. EPA promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in

lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to subtitle C (sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on January 31, 1986, at 51 Fed. Reg. 3783, the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. This authority has been expanded and modified several times since.

15. Prior to 2009, subparts BB and CC of 40 C.F.R part 264 were not part of the authorized state hazardous waste program for generators of hazardous waste in the State of Wisconsin. Pursuant to section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), however, enforcement authority for these subparts remains with the U.S. EPA.

16. At all times relevant to this Complaint, regulations of the State of Wisconsin, specifically WAC NR 615.05(4) and (6) and WAC NR 645, were part of the authorized hazardous waste program for the State of Wisconsin. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), enforcement authority for these provisions rests with both the State of Wisconsin and with U.S. EPA.

17. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of subtitle C of RCRA according to section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990,

as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of subtitle C of RCRA occurring after March 15, 2004, but before January 12, 2009.

General Allegations

18. Respondent is a corporation and thus a “person” as defined by WAC NR 600.03(170) and 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. Respondent owns and operates a plant in Boscobel, Wisconsin, which processes food grade plastics, including flexigraphic printing, and which employs presses for imprinting plastic and other films with ink, and recovery and reuse of ink solvents.

20. Respondent’s Boscobel plant consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. Respondent’s Boscobel plant is a “facility” as that term is defined at 40 C.F.R. § 260.10.

21. At all times relevant to this Complaint, Respondent created wastes, including solvents previously used for cleaning printing presses, rags contaminated with ethyl acetate also used to clean printing presses, and waste ink drippings.

22. The liquid wastes are at least 10 percent organic chemicals. They also have a flash point of less than 60 degrees Celsius, are therefore characteristically ignitable, as that term is defined at 40 C.F.R. § 260.21 and WAC 605.08(2), and bear the waste number D001. The rags are contaminated with ethyl acetate, a waste listed as

hazardous at 40 C.F.R. § 261.33 and WAC NR 605.09(1) and bearing the waste designations D001 and F003. These wastes are thus “hazardous” as that term is defined at section 1004(5) and WAC NR Chapter 605, and at 40 C.F.R. § 261.3.

23. Respondent operates a 1,000 – gallon tank which eventually collects all liquid printing wastes for solvent reclamation (the “dirty solvent tank”).

24. Respondent is a “generator,” as that term is defined in 40 C.F.R. § 260.10 and WAC NR 600.03(117).

25. Respondent does not have interim status under section 3005(e) of RCRA, 42 U.S.C. § 6925(e) or WAC 680.22.

26 Respondent has not applied for a permit to transport, store or dispose of hazardous waste under either 40 U.S.C. part 270, or for a license to transport, store or dispose of hazardous waste pursuant to WAC NR 680.31.

27. Respondent is subject to the regulations promulgated pursuant to subtitle C of RCRA, 42 U.S.C. §§ 6921-6930, and the analogous regulations of the State of Wisconsin as part of its authorized state hazardous waste management program.

Count I

28. Except as otherwise provided, a large quantity generator operating in Wisconsin on October 24, 2007, could, for ninety days or less, accumulate hazardous waste generated on-site without a federal hazardous waste permit, provided that the conditions of 40 C.F.R. § 262.34 with respect to air emissions were met. If the conditions of 40 C.F.R. § 262.34 respecting air emissions were not met, then the generator must have obtained interim status under section 3005(e) of RCRA, 42 U.S.C.

§ 6925(e), or applied for an operating permit under 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13.

29. Among the conditions for the exemption found at 40 C.F.R. § 262.34 is the requirement that a generator storing waste in tanks comply with subpart BB of 40 C.F.R. part 264, unless the tank equipment is operated in vacuum service, as those terms are defined in 40 C.F.R. § 264.1031. An operator claiming this exemption must maintain a list of identification numbers for the exempt equipment as required by 40 C.F.R. § 264.1064(g)(5).

30. On October 24, 2007, Respondent had not prepared records required by 40 C.F.R. § 264.1064(g)(5).

31. Because Respondent failed to prepare records required by 40 C.F.R. § 1064(g)(5), Respondent did not meet the conditions of 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(a) and the regulations found at 40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13.

Count II

32. Except as otherwise provided, a large quantity generator operating in Wisconsin on October 24, 2007, could, for ninety days or less, accumulate hazardous waste generated on-site without a federal hazardous waste permit, provided that the conditions of 40 C.F.R. § 262.34 with respect to air emissions were met. If the conditions of 40 C.F.R. § 262.34 respecting air emissions were not met, then the

generator must have obtained interim status under section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or applied for an operating permit under 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13.

33. Among the conditions for the exemption found at 40 C.F.R. § 262.34 is the requirement that a generator storing waste in tanks comply with subpart CC of 40 C.F.R. part 264, unless the generator certifies under 40 C.F.R. § 264.1080(b)(7) that it is equipped with and is operating air emission control technology pursuant to one of 40 C.F.R. parts 60, 61 or 63.

34. On October 24, 2007, Respondent had not prepared and maintained certification records required by 40 C.F.R. § 264.1080(b)(7).

35. Because Respondent failed to prepare and maintain certification records required by 40 C.F.R. §§ 1080(b)(7), Respondent did not meet the conditions of 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(a) and the regulations found at 40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13.

Count III

36. A large quantity generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without a Wisconsin hazardous waste license, provided that the conditions of WAC NR 615.05 [40 C.F.R. § 262.34]¹ are met.

¹ For the purposes of this document and for convenient reference, federal corollaries to enforceable state hazardous waste program requirements are provided in brackets.

37. If the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating license under WAC NR 680.30-680.32 [40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

38. Among the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] is the requirement that a generator comply with the requirements of WAC NR 645 [40 C.F.R. part 264, subpart J], which contains a requirement at WAC NR 645.08(7) [40 C.F.R. § 264.192(f)] that owners and operators must obtain and keep on file at the facility properly certified written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system in accordance with the requirements of WAC NR 645.08(2)-(6) [40 C.F.R. § 262.192(b)-(f)] and attest that the tanks system was properly designed and installed and that any repairs, also pursuant to WAC NR 645.08(2)-(6) [40 C.F.R. § 262.192(b)-(f)], were performed.

39. On October 24, 2007, Respondent could not produce the certified statements referred to in paragraph 38, above.

40. As set forth above, Respondent did not meet the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a license for the storage of hazardous waste. Therefore, Respondent stored hazardous waste without a permit or interim status in violation of WAC 680.22 [section 3005 of RCRA, 42 U.S.C. § 6925] and the regulations found at WAC NR 680.30-680.32 [40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count IV

41. Except as otherwise provided, a large quantity generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without a Wisconsin hazardous waste license, provided that the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] are met.

42. If the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] are not met, then the generator must apply for an operating permit under WAC NR 680.30-680.32 [40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

43. Among the conditions of WAC NR 615.05(4) and (6) [40 C.F.R. § 262.34] are the requirements at WAC NR 615.05(4)(a)(5) [40 C.F.R. § 262.34(a)(2)] that a generator mark each hazardous waste container with the date accumulation of hazardous waste in those containers commenced and at WAC NR 615.05(4)(a)(10) [40 C.F.R. § 262.34(a)(3)] that a generator mark hazardous waste containers as "hazardous waste."

44. On October 24, 2007, Respondent maintained two 55-gallon drums containing used rags contaminated with ethyl acetate and waste ink drippings. Respondent had not marked either of these drums with the date Respondent commenced storing contaminated rags and waste ink drippings in the drums.

45. On October 24, 2007, Respondent had not marked its 1,000-gallon dirty solvent tank with the label "hazardous waste."

46. As set forth above, Respondent did not meet the conditions of WAC NR 615.05(4) and (6) [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 WAC NR 680.22 [section 3005 of RCRA, 42 U.S.C. § 6925] and the regulations found at WAC NR 680.30-680.32 [40 C.F.R. part 264, 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Civil Penalty

47. Pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant has determined that an appropriate civil penalty to settle this action is \$7,200. In determining the penalty amount, Complainant took into account the seriousness of the violation, Respondent's cooperation in resolving this matter as well as documents and information provided by Respondent in response to a letter indicating U.S. EPA's intent to seek a penalty for the violations described above. Complainant further considered Respondent's prompt efforts to return to compliance. Complainant also considered U.S. EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,200 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. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must bear Respondent's name, "Pechiney Plastic Packaging, Inc.," the case docket number of this CAFO and the billing document number.

49. 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 the following:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

51. 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.

General Provisions

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

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

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

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

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

57. 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.

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

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

P Pechiney Plastic Packaging, Inc., Respondent

8/19/09

Date



Pechiney Plastic Packaging, Inc.

United States Environmental Protection Agency, Complainant

Sept. 3, 2009

Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Pechiney Plastic Packaging, Inc.
Docket No. RCRA-05-2009-0016

Final Order

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

9-4-09
Date



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

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SEP 11 2009
OFFICE OF REGIONAL
COUNSEL

CASE NAME: Pechinery Plastic Packaging, Inc.
DOCKET NO: RCRA RCRA-05-2009-0016

CERTIFICATE OF SERVICE

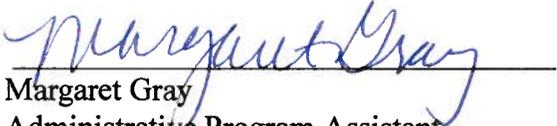
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Mr. Randy Flynn
Site Leader
Alcan Packaging
P.O. Box 247
Boscobel, Wisconsin 53805

Return Receipt # 7001 0320 0005 8915 6029

Dated: 9/11/09


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

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