



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

James H. Rourke, President
Mueller Brass Company
2199 Lapeer Avenue
Port Huron, Michigan 48060

Re: Consent Agreement and Final Order
Mueller Brass, MID005357504
Docket No.: **RCRA-05-2008-0016**

Dear Mr. Rourke:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed with the Regional Hearing Clerk on SEP 30 2008.

Please pay the civil penalty in the amount of \$110,000 in the manner prescribed in paragraphs 80 and 81 of the CAFO, and reference all checks with the number, BD 2750842R014, and Docket Number RCRA-05-2008-0016

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,

A handwritten signature in cursive script that reads "Willie H. Harris".

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

Enclosures

cc: George Bruchmann, Waste and Hazardous Materials Division, MDEQ
John Craig, Enforcement Section, WHMD, MDEQ
Larry AuBuchon, Southeast Michigan District Office, MDEQ

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:)
)
MUELLER BRASS CO.) **DOCKET NO. RCRA-05-2008-0016**
)
 Respondent)
)
) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
U.S. EPA ID NO. MID005357504)
)
)
 Respondent)
)

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTION

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous Waste and Solid Waste Amendments of 1984 ("HSWA"). This action is also simultaneously commenced and concluded under Sections 22.1(a)(4), 22.13(b), 22.14(a)(1)-(3) and (8), 22.18(b)(2) and (3), and 22.37 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Jurisdiction for this action is conferred upon the United States Environmental Protection Agency ("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.

3. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, U.S. EPA.

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4. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

5. 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 of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, 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.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). The U.S. EPA granted Michigan final authorization to administer certain HSWA and additional RCRA requirements effective January 23, 1990, 54 Fed. Reg. 48608 (November 24, 1989); June 24, 1991, 56 Fed. Reg. 18517 (April 23, 1991); November 30, 1993, 58 Fed. Reg. 51244 (October 1, 1993); April 8, 1996, 61 Fed. Reg. 4742 (February 8, 1996); December 28, 1998, 63 Fed. Reg. 57912 (October 29, 1998) (stayed and corrected effective June 1, 1999, 64 Fed. Reg. 10111 (March 2, 1999)); July 31, 2002, 67 Fed. Reg. 49617 (July 31, 2002); and 71 Fed. Reg. 12141 (March 9, 2006). The U.S. EPA authorized Michigan regulations are codified at Michigan Part 111 Administrative Rules ("MAR") 299.9101 *et seq.* See also 40 C.F.R. § 272.1151 *et seq.*

7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides U.S. EPA with the authority to enforce state regulations in those states authorized to administer a hazardous waste program.

8. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements imposed pursuant to HSWA take effect immediately in all states.

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

II. ALLEGATIONS

10. The Respondent is Mueller Brass Co., which is and was at all times relevant to this Consent Agreement and Final Order (“CAFO”) a corporation incorporated under the laws of Michigan.

11. Respondent is a "person" as defined by MAR 299.9106(i) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. Respondent is the owner and operator, as those terms are defined by MAR 299.9106(g) and (f), of a manufacturing plant located at 2199 Lapeer Avenue, Port Huron, Michigan 48060. This plant is hereinafter referred to as the “Facility.”

13. The Facility is a “facility” as defined by MAR 299.9103(r) and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

14. At the Facility, Respondent manufactures brass rods and copper fittings and forges aluminum and brass parts.

15. Representatives of U.S. EPA conducted a RCRA compliance evaluation inspection (“Inspection”) at the Facility on March 30-31, 2006, as part of a multi-media inspection.

16. At the time of the Inspection, the Facility included an area where Respondent conducted steam cleaning of equipment.

17. At the time of the Inspection, the steam cleaning area included a plastic tank located on top of a metal grate. The grate was located above an in-ground sump ("Steam Cleaner Sump").

18. The Steam Cleaner Sump consisted of a metal-walled tank located in a concrete liner.

19. Respondent would place equipment on top of the grate above the Steam Cleaner Sump and would pressure wash that equipment. Waste water from the pressure washing process would collect in the Steam Cleaner Sump.

20. Respondent periodically pumped the waste water from the Steam Cleaner Sump into the plastic tank using a sump pump and associated tubing. Respondent would then ship the waste water in the plastic tank off-site for disposal.

21. Respondent shipped the waste water from the Steam Cleaner Sump off-site on the three following dates: September 18, 2003; December 9, 2005; and May 9, 2006.

22. For the shipments identified in paragraph 21, the waste water from the Steam Cleaner Sump was shipped using hazardous waste manifests and was designated on the manifests as characteristic hazardous waste for cadmium (D006) and/or lead (D008).

23. At the time of the Inspection, the Facility included an area where Respondent cleaned equipment using an alkaline cleaner.

24. In the alkaline cleaner area, spent cleaning solution was stored in two above-ground tanks ("Alkaline Cleaner Tanks").

25. Respondent periodically shipped the spent cleaning solution in the Alkaline Cleaner Tanks off-site for disposal.

26. The waste from the Alkaline Cleaner Tanks was shipped using hazardous waste manifests and was designated on the manifests as characteristic hazardous waste for corrosivity (D002).

27. The wastes from the Steam Cleaner Sump and from the Alkaline Cleaner Tanks are each a hazardous waste as defined by MAR 299.9104(d) and 299.9203.

28. Respondent “stored” hazardous waste, as “store” is defined by MAR 299.9107(cc), in the Steam Cleaner Sump, plastic tank and other equipment described in Paragraphs 17-20 from the time the hazardous waste entered the Steam Cleaner Sump until such time as the hazardous waste was pumped out of the plastic tank and shipped off-site.

29. Respondent “stored” hazardous waste, as “store” is defined by MAR 299.9107(cc), in the Alkaline Cleaner Tanks from the time the hazardous waste entered the Alkaline Cleaner Tanks until such time as the hazardous waste in the Alkaline Cleaner Tanks was shipped off-site for disposal.

30. The Steam Cleaner Sump and Alkaline Cleaner Tanks are each a tank as defined by MAR 299.9108(a).

31. The plastic tank and the other equipment described in Paragraphs 17-20 are “ancillary equipment” as that term is defined in MAR 299.9101(q).

32. The Steam Cleaner Sump and ancillary equipment described in Paragraph 17-20 are collectively a tank system as defined by MAR 299.9108(b) (hereinafter, “Steam Cleaner Tank System”).

33. The Alkaline Cleaner Tanks are a tank system as defined by MAR 299.9108(b) (hereinafter, “Alkaline Cleaner Tank System”).

34. Respondent installed and/or commenced construction of, and first used, the Steam Cleaner Tank System in or around early 1995.

35. Respondent installed and/or commenced construction of, and first used, the Alkaline Cleaner Tank System in or around autumn 1996.

36. The Steam Cleaner Tank System and Alkaline Cleaner Tank System are each a “new tank system” as that term is defined by MAR 299.9105(s).

37. Pursuant to MAR 299.9601, owners and operators of a facility that treat, store or dispose of hazardous waste are required to comply with the standards in MAR Part 6.

38. Pursuant to MAR 299.9615, owners and operators who use tank systems to treat or store hazardous waste shall comply with all the requirements of 40 C.F.R. Part 264, Subpart J.

39. Pursuant to 40 C.F.R. § 264.192(a), owners or operators of new tank systems or components must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with 40 C.F.R. § 270.11(d) attesting that the system has sufficient structural integrity, is acceptable for the storing of hazardous waste, and satisfies the other requirements of 40 C.F.R. § 264.192(a).

40. Pursuant to 40 C.F.R. §§ 264.193(a) and (c)(3), new tank systems must, prior to being put into use, be provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system.

Count I - Failure to Have Tank Integrity Assessment - Steam Cleaner Tank System

41. Complainant incorporates Paragraphs 1 through 40 of this CAFO as though set forth in this Paragraph.

42. At the time of the Inspection, Respondent did not have a written assessment as required by 40 C.F.R. § 264.192(a) for the Steam Cleaner Tank System.

43. Respondent's failure to have a written assessment as required by 40 C.F.R. § 264.192(a) for the Steam Cleaner Tank System constitutes a violation of 40 C.F.R. § 264.192(a) and a violation of MAR 299.9601 and 299.9615.

Count II - Failure to Have Leak Detection System -Steam Cleaner Tank System

44. Complainant incorporates Paragraphs 1 through 40 of this CAFO as though set forth in this Paragraph.

45. At the time of the Inspection, the Steam Cleaner Tank System did not have a leak detection system which complied with the requirements of 40 C.F.R. §§ 264.193(a) and (c)(3).

46. Respondent's failure to provide a leak detection system which complied with the requirements of 40 C.F.R. §§ 264.193(a) and (c)(3) for the Steam Cleaner Tank System constitutes a violation of MAR 299.9601 and 299.9615.

Count III - Failure to Have Tank Integrity Assessment - Alkaline Cleaner Tank System

47. Complainant incorporates Paragraphs 1 through 40 of this CAFO as though set forth in this Paragraph.

48. At the time of the Inspection, Respondent did not have a written assessment as required by 40 C.F.R. § 264.192(a) for the Alkaline Cleaner Tank System.

49. Respondent's failure to have a written assessment as required by 40 C.F.R. § 264.192(a) for the Alkaline Cleaner Tank System constitutes a violation of 40 C.F.R. § 264.192(a) and a violation of MAR 299.9601 and 299.9615.

Count IV - Failure to Have Leak Detection System-Alkaline Cleaner Tank System

50. Complainant incorporates Paragraphs 1 through 40 of this CAFO as though set forth in this Paragraph.

51. At the time of the Inspection, the Alkaline Cleaner Tank System did not have a leak detection system which complied with the requirements of 40 C.F.R. §§ 264.193(a) and (c)(3).

52. Respondent's failure to provide a leak detection system which complied with the requirements of 40 C.F.R. §§ 264.193(a) and (c)(3) for the Alkaline Cleaner Tank System constitutes violations of MAR 299.9601 and 299.9615.

Count V - Failure to Conduct Daily Tank Inspections

53. Complainant incorporates Paragraphs 1 through 40 of this CAFO as though set forth in this Paragraph.

54. Pursuant to 40 C.F.R. § 264.195, owners or operators of tank systems must inspect the tank system at least once each operating day for the items set forth in 40 C.F.R. §§ 264.195(a) and (b).

55. Prior to March 23, 2006, Respondent did not inspect the Steam Cleaner Tank System or the Alkaline Cleaner Tank System (collectively, the "Tank Systems") on each operating day.

56. Respondent's failure to inspect the Tank Systems each operating day as required by 40 C.F.R. § 264.195 constitutes a violation of MAR 299.9601 and 299.9615.

Count VI - Storage of Hazardous Waste Without an Operating License or Interim Status

57. Complainant incorporates Paragraphs 1 through 56 of this CAFO as though set forth in this Paragraph.

58. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at MAR 299.9502, the treatment, storage, or disposal of hazardous waste by any person who does not have a permit, an operating license or interim status is prohibited.

59. At the time of, or prior to, the Inspection, Respondent did not have a permit, operating license or interim status to treat, store, or dispose of hazardous waste at the Facility.

60. By storing hazardous waste in the Tank Systems without a permit, operating license, or interim status, Respondent violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and MAR 299.9502.

III. TERMS OF SETTLEMENT

61. U.S. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

62. Respondent admits the jurisdictional allegations of this CAFO. Respondent agrees not to contest such jurisdiction in any proceeding to enforce the provisions of this CAFO.

63. Respondent neither admits nor denies the factual allegations of Section II of this CAFO.

64. Respondent consents to the issuance of this CAFO, all of the conditions of this CAFO, the performance of the Supplemental Environmental Project (“SEP”), and the assessment of the civil penalty as outlined in Section IV of this CAFO.

65. Respondent waives any and all rights under any provisions of law to a hearing on the allegations contained in this CAFO. Respondent also waives any right to contest or appeal the

factual allegations in Section II of this CAFO and any right to appeal the terms and conditions of this Consent Agreement or the Final Order.

66. Respondent's failure to timely comply with any provision of this CAFO may subject Respondent to a civil action pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), to collect penalties for any noncompliance with this CAFO (as well as injunctive relief) and any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth above. Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for noncompliance with the CAFO. In any such collection action, the validity, amount and appropriateness of this CAFO or the penalty and charges assessed hereunder will not be subject to review.

67. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in Section II of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

68. Nothing in this CAFO shall be construed to relieve Respondent from its obligation to comply with all applicable federal, state and local statutes and regulations, including the Subtitle C requirements at 40 C.F.R. Parts 260 through 270.

69. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO.

Notwithstanding any other provision of this CAFO, U.S. EPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right: (A) for any matters other than violations alleged in this CAFO, to take any action authorized under Section 3008 of RCRA; (B) to enforce compliance with the applicable provisions of the Michigan Administrative Rules; (C) to take any action under 40 C.F.R. Parts 124 and 270; and (D) to enforce compliance with this CAFO.

70. Nothing in this agreement prohibits, alters, or in any way limits U.S. EPA's ability 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 violation of any applicable provision of law.

71. This CAFO constitutes the entire settlement between the parties and constitutes final disposition of the violations alleged in Section II of this CAFO.

72. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

73. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5. Complainant shall promptly notify Respondent, through service or otherwise, of the filing of the CAFO.

74. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Facility. This CAFO is binding on Respondent and any successors in interest.

75. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

76. This CAFO shall terminate after U.S. EPA determines that Respondent has fully complied with all terms and conditions of this CAFO, including payment, in full, of all penalties due and owing and performance of the SEP and U.S. EPA provides written notice to Respondent of such termination.

IV. CONSENT AGREEMENT

77. RCRA Compliance and Closure

A. Respondent shall not treat, store, or dispose of hazardous waste at the Facility without a RCRA permit or operating license except in compliance with the Michigan Administrative Rules and 40 C.F.R. Parts 260 through 279.

B. Respondent shall submit a closure plan for the Steam Cleaner Tank System to the Michigan Department of Environmental Quality (“MDEQ”) within 90 days of the effective date of this CAFO. Respondent shall implement the closure plan for the Steam Cleaner Tank System per the direction of MDEQ. At the time Respondent submits the closure plan to MDEQ, Respondent shall also submit a copy of that closure plan to U.S. EPA in accordance with the instructions in Paragraph 91.

C. Respondent shall notify U.S. EPA in writing within 30 calendar days after Respondent completes closure of the Steam Cleaner Tank System under the closure plan.

Determination of Penalty Amount

78. 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, requires 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 \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997, and may assess a civil penalty of up to \$32,500 per day for each violation that occurred after March 15, 2004.

79. Complainant determined the proposed civil penalty in this CAFO in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 1990 RCRA Civil Penalty Policy. Based on an analysis of the above factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$110,000.00 to be paid as specified below.

Payment of Penalty

80. Within 30 days following the effective date of this CAFO, Respondent shall pay a civil penalty in the amount of \$110,000.00. Payment shall be made by certified or cashier's check, payable to “Treasurer, the United States of America”, and shall be sent to:

U.S. EPA, Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference the name of Respondent and the Docket Number of this CAFO.

81. Upon payment of the civil penalty, Respondent shall send to each of the persons listed below a copy of the check and a transmittal letter referencing the name of Respondent and the docket number of this CAFO:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd. (E-13J)
Chicago, Illinois 60604-3590

Charles V. Mikalian
Associate Regional Counsel
U.S. EPA, Region 5
Office of Regional Counsel (C-14J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Michael Beedle
RCRA Branch (LR-8J)
U.S. EPA
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Supplemental Environmental Project

82. Respondent hereby certifies that, as of the date of this CAFO:

A. Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation;

B. Respondent is not funding any aspect of the SEP with any funding provided by a federal, state, or local grant;

C. Except for this CAFO, Respondent is not required to perform or develop the SEP in settlement of any federal, state, or local enforcement action; and

D. Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

83. In performing the SEP, Respondent shall perform the activities generally described in this Paragraph.

A. Respondent will install and operate a reverse osmosis waste water treatment system at the Facility. Respondent will complete installation of the reverse osmosis system not later than twelve (12) months after the effective date of this CAFO. Respondent will install and operate the reverse osmosis treatment system downstream of the existing pre-treatment unit at the Facility but at a location upstream of the discharge of the Facility's wastewater to the publicly owned treatment works ("POTW"). Respondent will use the reverse osmosis system to treat wastewater which has been processed in the existing pre-treatment unit. Use of the reverse osmosis system will capture metal pollutants in the Facility's wastewater which would otherwise be discharged to the POTW. Respondent will design the reverse osmosis system with a 90% by weight removal efficiency for metals. Based on estimates provided by Respondent during negotiation of this CAFO, operation of the reverse osmosis treatment system at a 90% removal efficiency would have reduced discharge of metals under the Facility's POTW permit by approximately 360 and 275 pounds, respectively, in 2006 and 2007.

B. Respondent will reuse at the Facility wastewater which is treated in the reverse osmosis system. Reuse of treated water will allow Respondent to reduce the volume of water it discharges to the POTW and to reduce its purchase of city water for use in Facility processes. Based on estimates provided by Respondent during negotiation of this CAFO, this reuse of wastewater would have reduced Facility discharges to the POTW and city water purchases each by approximately 22 million gallons in 2007.

C. Within 30 days after the effective date of this CAFO, Respondent shall submit to U.S. EPA for review and approval a Statement of Work ("SOW"). In the SOW, Respondent shall identify technical specifications, long-term operation and maintenance requirements (*e.g.*, filter replacement), and a schedule for construction of the reverse osmosis system. Upon U.S. EPA approval of the SOW, Respondent shall construct the SEP in accordance with the approved SOW.

D. Within 30 days after completion of construction of the reverse osmosis system, Respondent shall begin operation of that system.

E. Unless Respondent has ceased all operations at the Facility, Respondent will continue to operate the existing pre-treatment unit for at least five years after the effective date of the CAFO. This requirement shall not apply during periods of scheduled manufacturing, shutdown or maintenance or during unanticipated manufacturing or treatment system breakdown or malfunction; and

F. The total expenditure for the SEP, including performance of the activities set forth in the SOW, shall be no less than \$555,000.

84. Respondent shall apply for and obtain all permits and approvals necessary for the implementation and completion of the SEP activities.

85. Reporting Requirements. Respondent shall submit the following reports to U.S. EPA:

A. Respondent shall submit monthly progress reports for the construction phase of the SEP no later than the 15th day of each month following the effective date of this CAFO. The monthly progress reports shall note the significant accomplishments and any difficulties encountered during the reporting period;

B. Respondent shall submit a Construction Completion Report within sixty (60) days after Respondent completes construction of the SEP. The Construction Completion Report shall include a certification that the reverse osmosis system has been installed pursuant to the provisions of this CAFO;

C. During the first year of operation of the reverse osmosis system, Respondent shall submit quarterly operation reports every ninety days after Respondent begins operating the reverse osmosis system. Each quarterly progress report shall include the following information for the reporting period:

- i. total metals discharged to POTW (in pounds);
- ii. total metals shipped off site for recycling (in pounds), including shipping documents showing the destination facility;
- iii. total water (in gallons) treated by the reverse osmosis system;
- iv. total water (in gallons) treated by the reverse osmosis system and reused at the Facility;

- v. total water (in gallons) discharged to the POTW on a monthly basis; and
- vi. total city water purchases, based on the most recent water bill by the City of Huron (in gallons).

D. Respondent shall submit an Annual SEP Summary Report within sixty (60) days after the 2nd, 3rd, 4th and 5th anniversaries of beginning operation of the reverse osmosis system.

Each Annual SEP Summary Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. An audit of SEP expenditures, including but not limited to, itemized costs for the SEP, documented by copies of purchase orders and receipts or canceled checks;
- iii. Certification that the SEP has been implemented pursuant to the provisions of this CAFO; and
- iv. A description of the environmental and public health benefits resulting from implementation of the SEP and a best estimate quantification of the benefits and pollutant reductions obtained.

86. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act."

87. Respondent shall allow U.S. EPA to inspect the Facility at any time in order to confirm that the SEP is operating properly and in conformity with the representations made herein and

that all records pertaining to the SEP will be kept at the Facility and made available to U.S. EPA and MDEQ inspectors upon request.

88. For a period of 5 years after EPA approval of the final Annual SEP Summary Report, Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to U.S. EPA pursuant to this CAFO. Respondent shall provide documentation of any such underlying research and data to U.S. EPA within twenty-one (21) calendar days of a request for such information. In all documents or reports submitted to U.S. EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

EPA Approval

89. Following receipt of the SOW or each report described in Paragraph 85, U.S. EPA may take one of the following actions:

- A. accept the SOW or report;
- B. reject the SOW or report, notify the Respondent in writing of deficiencies in the report and grant an additional thirty (30) calendar days in which to correct the deficiencies; or
- C. reject the SOW or report and seek stipulated penalties in accordance with

Paragraphs 92-95.

90. If U.S. EPA elects to exercise the option set forth in Paragraph 89(B), U.S. EPA shall permit Respondent the opportunity to object in writing to U.S. EPA's notification of deficiency or disapproval within ten (10) calendar days of receipt of such notification. U.S. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by U.S. EPA of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) calendar day period, U.S. EPA shall provide a written statement of its decision to Respondent. U.S. EPA's decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by U.S. EPA as a result of any such deficiency or failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by U.S. EPA, stipulated penalties shall be due and payable by Respondent to U.S. EPA in accordance with this CAFO.

91. Notice Whenever, under the terms of this CAFO, notice is required to be given or a document sent by one party to another, it shall be directed to the individuals at the addresses specified below:

As to U.S. EPA:

Michael Beedle
RCRA Branch, LR-8J
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Respondent

Barry Munce
Quality & Technical Services Manager
Mueller Brass Co.
2199 Lapeer Ave.
Port Huron, MI 48060

Stipulated Penalties

92. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 83 and the SOW and/or actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 83(F), Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in Paragraph 92(B), for a SEP which has not been completed satisfactorily pursuant to Paragraph 83 and the SOW, Respondent shall pay a stipulated penalty to the United States in the amount of \$112,742;

B. If the SEP is not completed satisfactorily, but Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required by Paragraph 83(F) to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty;

C. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required by Paragraph 83(F) to be spent for the project, Respondent shall pay a stipulated penalty in the amount of \$28,185;

D. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required by Paragraph 83(F) to be spent for the project, Respondent shall not pay any stipulated penalty; and

E. For failure to submit any report required by Paragraph 85, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each calendar day after the due date until the report is submitted.

93. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of U.S. EPA.

94. Stipulated penalties shall begin to accrue on the calendar day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

95. Respondent shall pay stipulated penalties within fifteen (15) calendar days of receipt of written demand by U.S. EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraphs 80 and 81 of this CAFO. Interest and late charges shall accrue and be paid as stated in paragraph 97 of this CAFO.

96. Force Majeure

A. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing within ten (10) calendar days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect

as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

B. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

C. If U.S. EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, U.S. EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

D. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under paragraph 96(B). Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

97. Late Payments Pursuant to 31 U.S.C. § 3717, Respondent shall pay the following amounts on any amount overdue under this CAFO:

A. Interest Any unpaid portion of a civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will

be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

B. Monthly Handling Charge Respondent shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.

C. Payment Penalty On any portion of a civil penalty more than 90 calendar days past due, Respondent shall pay a non payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non payment is in addition to charges which accrue or may accrue under Paragraphs 97(A) and (B).

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

99. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the cash civil penalty or stipulated penalties paid to the U.S. Treasury. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

V. SIGNATORIES

Each undersigned representative of a party to this CAFO certifies that he or she is fully authorized to enter into the terms of this CAFO and to bind legally such party to this document.

Agreed to this 18 day of September, 2008.



James H. Rourke, President
Mueller Brass Co.

Agreed to this 25 day of Sept, 2008.



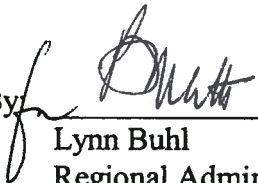
Margaret M. Guerriero
Director, Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
Complainant

RECEIVED
REGIONAL HEARING CLERK
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2008 SEP 30 PM 3:33

FINAL ORDER

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.

Ordered this 30th day of September, 2008.

By 
Lynn Buhl
Regional Administrator
U.S. EPA Region 5

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2008 SEP 30 PM 3:33

CASE NAME: Mueller Brass Company
DOCKET NO: RCRA-05-2008-0016

CERTIFICATE OF SERVICE

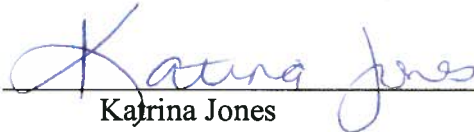
I hereby certify that today, I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

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:

James H. Rourke
President
Mueller Brass Company
2199 Lapeer Avenue
Port Huron, Michigan 48060

Return Receipt # 7001 0320 0006 1448 7425

Dated: 9/30/08



Katrina Jones
Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RCRA Branch
77 W. Jackson Boulevard – LR-8J
Chicago, IL 60604-3590
(312) 353-5882

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