



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

FEB 19 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

LR-8J

Mr. Frank Parker
Corporate Senior Vice President of Marketing
The WM Powell Company
2503 Spring Grove Avenue
Cincinnati, Ohio 45214

Re: Administrative Complaint and Compliance Order
The WM Powell Company
EPA ID No.: OHD 004 253 704 **RCRA-05-2008-0002**

Dear Mr. Parker:

Enclosed please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. We filed the originals with the Regional Hearing Clerk on FEB 19 2008.

Please pay the civil penalty in accordance with paragraphs 131 through 136 of the CAFO, and reference your payment with the number BD 2750859R001 and docket number **RCRA-05-2008-0002**. Also, enclosed is a Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings.

Thank you for your cooperation in resolving this matter.

Sincerely,

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

Enclosure

cc: Laura A. Ringenbach, Taft, Stettinius & Hollister LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2008-0002
)	
The Wm. Powell Company, 2503 Spring Grove Avenue Cincinnati, Ohio, 45214)	Consent Agreement and Final Order
)	
EPA ID No. OHD 004 253 704)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency ("U.S. EPA" or "Complainant") and the Wm. Powell Company ("Powell" or "Respondent") agree to resolve this action before filing a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") by the filing of this Consent Agreement and Final Order ("CAFO"). 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

I. PRELIMINARY STATEMENT AND 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 and Solid Waste Amendments of 1984 ("HSWA"). This action is also instituted pursuant to Sections 22.01(a)(4), 22.13(b), 22.18(b)(2) and (3), and 22.37 of the Consolidated Rules. 40 C.F.R. §§ 22.01(a)(4), 22.13(b), 22.18(b)(2) and (3), and 22.37.

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2. Jurisdiction for this action is conferred upon 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.

II. REGULATORY BACKGROUND

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, 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 Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). The U.S. EPA granted Ohio final authorization to administer certain HSWA and additional RCRA requirements effective June 7, 1991, 56 Fed. Reg. 14203 (April 8, 1991) (corrected effective August 19, 1991 (56 Fed. Reg. 28088 (June 19, 1991))); September 25, 1995, 60 Fed. Reg. 38502 (July 27, 1995); and

December 23, 1996, 61 Fed. Reg. 54950 (October 23, 1996). The U.S. EPA-authorized Ohio regulations are codified at Ohio Administrative Code (OAC) Chapters 3745-49 through 69. See also 40 C.F.R. § 272.1800 *et seq.*

7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), U.S. EPA must carry out the new requirements promulgated pursuant to the HSWA, Pub. L. 98-616, until such time as the State is authorized to carry out such a program. Under the terms of Section 3006(g), the requirements established by HSWA are effective in all States regardless of their authorization status and are implemented by U.S. EPA until the State is granted final authorization with respect to those requirements.
8. 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.
9. U.S. EPA has provided the State of Ohio notice of this action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. GENERAL ALLEGATIONS

10. U.S. EPA alleges the following facts which Respondent does not admit and which shall not be binding upon Respondent for any purpose other than establishing jurisdiction for the issuance and enforcement of this CAFO.
11. In 1886 Respondent became a corporation under the laws of the State of Ohio.
12. Respondent is a "person" as defined by OAC 3745-50-10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. Respondent owned or operated real property at 2503 Spring Grove Avenue, Cincinnati, Ohio, with structures and other appurtenances and improvements, to store, treat, and dispose of hazardous waste.
 14. Respondent owned and operated a facility (“the facility”) as defined by 40 C.F.R. § 260.10.
 15. Respondent manufactured industrial bronze valves and associated parts in its foundry.
 16. Respondent used sand and other materials to form sand casts.
 17. Respondent poured liquid bronze into the sand casts to make bronze valves and associated parts.
 18. Respondent allowed the liquid bronze to cool and solidify, then removed the sand casts, leaving bronze valves and associated parts.
 19. Eventually, the sand became contaminated with lead.
 20. Periodically, Respondent removed the lead-contaminated sand from the casting process and replaced it with clean sand.
 21. Periodically, Respondent placed its lead-contaminated sand onto concrete outdoors.
 22. Respondent operated a foundry ventilation system of fans, vents, duct work, a bag house, and hopper, to collect dust and remove it from its foundry.
 23. Respondent’s foundry dust was contaminated with lead.
 24. Respondent dropped lead-contaminated dust from its bag house into an open hopper outdoors.
 25. Respondent’s lead-contaminated dust fell onto the concrete and asphalt under and around the open hopper.
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26. Respondent added the lead-contaminated dust to the lead-contaminated sand on the concrete outdoors.
27. Respondent's lead-contaminated sand and dust were solids.
28. Respondent placed its lead-contaminated sand and dust onto concrete or asphalt outdoors at its Facility allowing it to enter the environment or be emitted into the air.
29. Respondent's placing of its lead-contaminated sand and dust onto concrete or asphalt outdoors at its facility allowing it to enter the environment or be emitted into the air, was "disposal" of solid waste at its Facility as defined by OAC 3745-50-10 [40 C.F.R. § 260.10].
30. Respondent collected, accumulated, stored, treated, and disposed of its lead-contaminated sand and dust.
31. Respondent "abandoned" its lead-contaminated sand and dust as defined at 40 C.F.R. §§ 261.2(a)(2)(I) and (b)(1).
32. Respondent's lead-contaminated sand and dust were "discarded material" as defined at 40 C.F.R. § 261.2(a)(2).
33. Respondent's lead-contaminated dust and sand were "solid waste" as defined at 40 C.F.R. § 261.2(a)(1).
34. Respondent added to its lead-contaminated sand and dust "Enviroblend," or "Freeflow," or another treatment material, to treat it for disposal.
35. "Enviroblend" and "Freeflow" were market products which were used to treat hazardous waste that exhibit the toxicity characteristic for lead (D008).
36. Respondent used a mixer and mixed its lead-contaminated sand and dust with "Enviroblend," or "Freeflow," or another treatment material.

37. Respondent placed into roll-off boxes its lead-contaminated dust and sand, mixed with "Enviroblend," or "Freeflow," or another treatment material.
38. Respondent sampled its lead-contaminated dust and sand mixed with "Enviroblend," or "Freeflow," or another treatment material, and provided them to Whitton Container, Inc., 1478 Fitzpatrick Street, Cincinnati, Ohio, ("Whitton"), a professional waste hauler.
39. Whitton delivered Respondent's samples to Cardinal Laboratories, 104 North Street, Wilder, Kentucky, for analysis.
40. Cardinal Laboratories provided Whitton with the results of its analyses of Respondent's samples.
41. Whitton provided non-hazardous waste landfills the analytical results from Cardinal Laboratories prior to disposal of Respondent's lead contaminated sand and dust.
42. Whitton removed Respondent's lead-contaminated dust and sand mixed with "Enviroblend," or "Freeflow," or another treatment material, in roll-off boxes, and delivered them to a non-hazardous waste landfill for disposal.
43. Respondent employed several employees who mixed its lead-contaminated sand and dust with "Enviroblend," or "Freeflow," or another treatment material for treatment and disposal.
44. Respondent's employees then placed its lead-contaminated sand and dust, mixed with "Enviroblend," or "Freeflow," or another treatment material, into roll-off boxes for off-site disposal.
45. Respondent tested these employees, and other foundry employees, to determine the levels of lead in their blood, pursuant to OSHA regulations.
46. Several of Respondent's employees had elevated levels of lead in their blood.

47. As a precautionary step, Respondent removed these employees from their duties.
48. Respondent returned these employees to their duties once the level of lead in their blood decreased.
49. Respondent managed its lead-contaminated dust and sand in this manner from at least September 27, 1999, through September 27, 2004.

IV. SPECIFIC ALLEGATIONS

50. U.S. EPA alleges the following specific facts which Respondent does not admit and which shall not be binding upon Respondent for any purpose other than establishing jurisdiction for the issuance and enforcement of this CAFO.
51. On August 11, 1980, Respondent submitted to the State of Ohio and the U.S. EPA a Notification of Hazardous Waste Activity as required by RCRA.
52. Respondent's Notification identified its Hazardous Waste Activity as "Treat/Store/Dispose."
53. Respondent's Notification Description of Hazardous Wastes included listed non-specific sources (F001, F002, F003, F005), commercial chemical products (U002, U019, U134, U135, U140, U154, U188, U211), and characteristic non-listed (ignitable, corrosive, reactive, and toxic).
54. On November 19, 1980, Respondent stated by letter it was a generator of hazardous waste but not involved in storage, treatment, or disposal of hazardous waste.
55. Respondent was a "Generator" of Hazardous Waste pursuant to OAC 3745-50-10 [40 C.F.R. § 260.10].
56. On September 27, 2004, U.S. EPA conducted an inspection of Respondent's facility to determine its compliance with RCRA.

57. As of September 27, 2004, Respondent had not performed any hazardous waste determinations for some of its wastes.
58. As of September 27, 2004, Respondent had not provided any employee training for hazardous waste handling activities.
59. On September 27, 2004, Respondent had lead-contaminated sand and dust in a pile on concrete and asphalt outdoors.
60. On September 27, 2004, Respondent had lead-contaminated dust underneath its bag house, in an open hopper, outside.
61. On September 27, 2004, Respondent had lead-contaminated dust on the concrete underneath its open hopper.
62. On September 27, 2004, Respondent's lead-contaminated dust, on the concrete underneath its open hopper, had foot prints and wheel prints, and had been scattered.
63. On September 27, 2004, Respondent did not have readily available records documenting its treatment of its lead-contaminated sand and dust for land disposal.
64. On September 27, 2004, Respondent did not have readily available records documenting its waste analysis of its lead-contaminated sand and dust for land disposal.
65. On September 27, 2004, Respondent did not have readily available records documenting its post-treatment waste analysis of its lead-contaminated sand and dust for land disposal.
66. Following the inspection, on December 9, 2004, Respondent's analysis of a sample of lead-contaminated sand indicated it had a lead concentration level of 30.6 mg/L, pursuant to a Toxicity Characteristic Leaching Procedure Analysis.

67. Following the inspection, on December 9, 2004, Respondent's analysis of a sample of its lead-contaminated dust indicated it had a lead concentration level of 52.4 mg/L, pursuant to a Toxicity Characteristic Leaching Procedure analysis.
68. Respondent's lead-contaminated sand and dust were hazardous waste characteristic toxic for lead, EPA Hazardous Waste Number D008.
69. On March 7, 2005, U.S. EPA completed its Compliance Evaluation Inspection Report for the Facility.
70. On June 3, 2005, U.S. EPA issued to Respondent its Notice of Violation for the Facility.
71. By July 11, 2005, Respondent contracted with Vanguard Environment, Inc., to assist Respondent in environmental matters such as training, documentation, and compliance issues.
72. Respondent failed to apply for, and neither Complainant nor the State of Ohio issued to Respondent, a hazardous waste permit, pursuant to the regulations at 40 C.F.R. Part 270 and OAC 3745-50-(40 through 45).

Count I - Hazardous Waste Determinations

73. Complainant incorporates paragraphs 1 through 72 of this CAFO as though set forth in this paragraph.
 74. Respondent was required to complete a hazardous waste determination for its lead-contaminated sand and dust, pursuant to OAC Rule 3745-52-11 [40 C.F.R. § 262.11].
 75. However, as of September 27, 2004, Respondent had failed to complete an adequate hazardous waste determination for its lead-contaminated sand and dust, pursuant to OAC Rule 3745-52-11 [40 C.F.R. § 262.11].
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76. Respondent's failure to complete an adequate hazardous waste determination for its lead-contaminated sand and dust violated OAC Rule 3745-52-11 [40 C.F.R. § 262.11].

Count II - Failure to Provide Personnel Training

77. Complainant incorporates paragraphs 1 through 76 of this CAFO as though set forth in this paragraph.
78. OAC 3745-54-16(A)(1) and 3745-65-16(A)(1) [40 C.F.R. §§ 264.16(a)(1) and 265.16(a)(1)] require that within 6 months after the effective date of the regulation, or six months after the date of their employment or assignment to a facility or to a new position at the facility, hazardous waste facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste requirements.
79. Prior to January of 1999, Respondent hired several employees whose duties included mixing lead-contaminated sand and dust with "Enviroblend," or "Freeflow," or another treatment material for treatment and disposal.
80. On numerous occasions in 1999, 2000, 2001, 2002, 2003, and 2004, these employees mixed lead-contaminated sand and dust with "Enviroblend," or "Freeflow," or another treatment material for treatment and disposal.
81. However, as of September 27, 2004, these employees failed to complete a program of classroom instruction or on-the-job training to teach them to perform this duty in a way that ensures the Facility's compliance with hazardous waste requirements.
82. On or about February 16, 2000, pursuant to OSHA testing, Respondent found one employee had elevated levels of lead in his blood.

83. As a precautionary step, Respondent removed the employee from his regular foundry duties, pursuant to OSHA.
84. Respondent's failure to have such employees complete a program of classroom instruction or on-the-job training to teach them to perform their duties in a way that ensures the facility's compliance with hazardous waste requirements, violated OAC 3745-54-16(A)(1) and 3745-65-16(A)(1) [40 C.F.R. §§ 264.16(a)(1) and 265.16(a)(1)].

Count III - Failure to Minimize Possibility of Release of Hazardous Waste

85. Complainant incorporates paragraphs 1 through 84 of this CAFO as though set forth in this paragraph.
86. OAC Rule 3745-54-31 and 3745-65-31 [40 C.F.R. §§ 264.31 and 265.31] states facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
87. On September 27, 2004, and for at least the prior (5) five years, Respondent placed lead-contaminated sand onto concrete (an area approximately 30' x 34', and adjacent to the eastern wall of the old Showroom building, and adjacent to the northern wall of the old Pipeshop Building ("the Concrete Area")).
88. On September 27, 2004, and for at least the five (5) prior years, Respondent placed lead-contaminated dust into an unenclosed hopper outdoors.
89. On September 27, 2004, and for at least the five (5) prior years, Respondent placed lead-contaminated dust underneath its hopper, on concrete and asphalt, outdoors.

90. On September 27, 2004, and for at least the prior (5) five years, Respondent placed lead-contaminated dust from its hopper onto its pile of lead-contaminated sand on the concrete or asphalt outdoors.
91. Respondent's placement of lead-contaminated sand onto concrete outdoors, lead-contaminated dust into an unenclosed hopper outdoors, lead-contaminated dust underneath its hopper onto concrete outdoors, and lead-contaminated dust from its hopper onto its pile of lead-contaminated sand on the concrete or asphalt outdoors, resulting in the release of hazardous waste constituents to air, violated OAC Rule 3745-54-31 and 3745-65-31 [40 C.F.R. § 264.31 and 265.31].

**Count IV - Storage, Treatment, and Disposal of Hazardous Waste
Without Interim Status or a Permit**

92. Complainant incorporates paragraphs 1 through 91 of this CAFO as though set forth in this paragraph.
93. Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and the regulations at OAC 3745-50-45 [40 C.F.R. Part 270] state that the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit, or interim status, is prohibited.
94. On September 27, 2004, and for at least the prior five (5) years, Respondent placed lead-contaminated sand on the concrete outdoors.
95. On September 27, 2004, and for at least the prior five (5) years, Respondent placed lead-contaminated dust in an open hopper underneath its bag house.
96. On September 27, 2004, and for at least the prior five (5) years, Respondent placed lead-contaminated dust underneath its hopper, on concrete, outdoors.

97. On September 27, 2004, and for at least the prior five (5) years, Respondent placed lead-contaminated dust from its hopper on its pile of lead-contaminated sand on the concrete or asphalt outdoors.
98. On or about September 27, 2004, and for at least the prior five (5) years, Respondent mixed its lead-contaminated sand and dust with "Enviroblend," or "Freeflow," or another treatment material, for treatment and disposal.
99. Respondent never applied for, and neither Complainant nor the State of Ohio issued to Respondent, a Hazardous Waste Permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at OAC 3745-50-45 [40 C.F.R. Part 270].
100. Respondent stored, treated, and disposed of its lead-contaminated sand and dust without a permit, in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at OAC 3745-50-45 [40 C.F.R. Part 270].

Count V - Characteristic Waste Land Disposal Prohibition

101. Complainant incorporates paragraphs 1 through 100 of this CAFO as though set forth in this paragraph.
102. OAC Rule 3745-270-40(A) states a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table.
103. The Treatment Standards for Hazardous Waste table states that non-wastewater wastes that exhibit the characteristic of toxicity for lead (D008) must be treated to below a TCLP concentration of 0.75 mg/l lead.

104. Pursuant to 3745-51-24(A), [40 C.F.R. § 261.24(a)], a waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S.EPA Publication SW-846 (incorporated by reference, see rule 3745-50-11 of the Administrative Code), the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of this rule at a concentration equal to or greater than the respective value given in that Table. The toxicity concentration value for lead is 5 milligrams per liter ("mg/L").
105. On September 27, 2004, Respondent had lead-contaminated sand and dust on concrete or asphalt outdoors.
106. Following the inspection, one sample of contaminated sand underwent a TCLP Analysis and indicated a lead concentration of 30.6 mg/L
107. Following the inspection, one sample of contaminated dust underwent a TCLP Analysis and indicated a lead concentration of 52.4 mg/L.
108. Therefore, Respondent land disposed prohibited wastes which exhibited a characteristic under rules 3745-51-20 to 3745-51-24, in violation of OAC 3745-270-09 (c), [40 C.F.R. § 268.9 (c)].

V. CONSENT AGREEMENT

109. EPA and Respondent agree this action should be settled without resort to hearing or further proceedings upon the terms of this CAFO.

110. This CAFO shall apply to and be binding upon Complainant and upon Respondent, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

The Regulations

111. Respondent admits the jurisdictional allegations of this CAFO pursuant to 40 C.F.R. § 22.18(b)(2).
112. Respondent neither admits nor denies the facts, legal conclusions, and violations alleged in this CAFO pursuant to 40 C.F.R. § 22.18(b)(2).
113. Respondent consents to the assessment of a civil penalty below pursuant to 40 C.F.R. § 22.18(b)(2).
114. Respondent consents to the issuance of the CAFO pursuant to 40 C.F.R. § 22.18(b)(2).
115. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying this CAFO pursuant to 40 C.F.R. § 22.18(b)(2).
116. Respondent certifies its Facility is in compliance with the requirements that formed the basis of the allegations of this CAFO.

The Compliance Agreement

117. Respondent remains the owner or operator of the Facility and continues to generate hazardous waste.
118. Respondent agrees to comply with the following requirements pursuant to the authority of the OAC rules, as applicable, and 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b).

119. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA Permit, or shall only store, treat, or dispose of hazardous waste in compliance with conditions for RCRA Permit Exempt Status pursuant to applicable law.
120. Within 60 days of the effective date of this CAFO Respondent shall submit to the Ohio Environmental Protection Agency, ("OEPA"), for approval a proposed closure plan for the Concrete Area referenced in Paragraph 87 of this CAFO. Respondent shall propose the closure plan in accordance with applicable OAC rules.
121. Respondent's proposed closure plan is subject to approval by OEPA. If OEPA rejects Respondent's proposed closure plan, and provides Respondent with a written statement of its deficiencies, Respondent shall submit to OEPA for approval a revised proposed closure plan addressing the deficiencies, within 30 days. If OEPA modifies the proposed closure plan, the modified proposed closure plan becomes the approved "Closure Plan." The Parties agree that OEPA's approval, disapproval, or modification of Respondent's proposed closure plan constitutes an "action" of the Director of Ohio EPA as that term is defined in Oh. Rev. Code §3745.04, and Respondent reserves any and all rights and defenses, including but not limited to its right to appeal, pursuant to Ohio law.
122. Upon OEPA approval or modification of Respondent's proposed or revised proposed closure plan, Respondent shall implement the Closure Plan pursuant to OAC rules, as applicable. Respondent shall complete the Closure Plan timely, but no later than February 15, 2010. Respondent shall provide U.S. EPA semi-annual progress reports of its execution of the Closure Plan.

123. Within 60 days of OEPA approval or modification of Respondent's proposed or revised proposed closure plan, and upon OEPA request, Respondent shall submit the Closure Plan cost estimate and documentation demonstrating Respondent has established financial assurance for the Closure Plan, pursuant to OAC rules, as applicable.
124. If Respondent is unable to complete the Closure Plan by February 15, 2010, it shall notify EPA prior to that date, explain the reasons for its untimeliness, and propose a revised date to complete the Closure Plan.
125. Within 60 days after Respondent completes the Closure Plan, Respondent shall submit to OEPA its certification of closure in accordance with OAC rules, as applicable. Respondent's closure certification of the Concrete Area referenced in Paragraph 87 of this CAFO will abate the alleged violations of Counts 3, 4, and 5 of this CAFO.
126. If Respondent sells any part of its Facility which is subject to this Consent Agreement and Final Order, it shall complete the following. First, provide the prospective purchaser with a true, accurate and complete copy of this CAFO prior to the purchase date. Second, provide U.S. EPA notice of a such sale within fifteen (15) business days of such sale, including but not limited to, the identity of the purchaser and its' contact information.
127. Respondent shall submit all reports, submissions, and notifications required by this Order to:

Michael Beedle (LR-8J)
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604.

The Civil Penalty

128. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000.00 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 \$27,500.00 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997, and a civil penalty up to \$32,500.00 per day for each violation of Subtitle C of RCRA occurring on or after March 15, 2004.
129. Complainant determined the civil penalty according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Administrator of U.S. EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements” to determine an appropriate civil penalty. 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this action with specific reference to EPA’s 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.
130. After considering the facts and circumstances of this action, the seriousness of the violation, Respondent’s good faith efforts to comply with applicable requirements, and U.S. EPA’s 2003 RCRA Civil Penalty Policy, Complainant determined the appropriate civil penalty is \$726,400.00.

131. Respondent shall pay the civil penalty of \$726,400.00, over (5) five years, at an annual interest rate of 4%, for a total of \$800,000.00. Respondent shall pay the civil penalty in fifty-nine (59) equal monthly payments of \$13,333.33, with a sixtieth (60th) and final payment of \$13,333.53. Respondent's 1st payment is due the tenth (10th) of the month following the effective date of the CAFO, with all fifty-nine (59) subsequent payments due the tenth (10th) day of each successive month.

132. Respondent may pay the civil penalty by Cashier's or Certified Checks, payable to the Order of the "Treasurer, United States of America," and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979007
St. Louis, MO 63197-9000

Respondent shall designate on the face of all checks the name and docket number of this action.

133. Alternatively, Respondent may pay the civil penalty by Remittance Express (Automated Clearing House (ACH) for Receiving U.S. Currency) to:

U.S. Treasury
American Bankers Association No. 051036706
Account No. 310006 (U.S. Environmental Protection Agency)
Transaction Code No. 22 (Checking)
CTX Format

134. Alternatively, Respondent may pay the civil penalty on line at "www.pay.gov".

135. Interest shall accrue on any portion of the civil penalty which remains unpaid after ninety (90) days, at the prevailing United States Treasury tax and loan rate, in accordance with 4

C.F.R. § 102.13(c). Respondent shall provide a copy of all Cashier's or Certified Checks, or Notice of Remittance Express (Automated Clearing House (ACH) for Receiving U.S. Currency) Payments, or Notice of On Line Payments to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604
brooks-woodard.sonja@epa.gov

Michael Beedle (LR-8J)
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604
beedle.michael@epa.gov, and,

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604
trevino.jeffery@epa.gov

136. The civil penalty above represents civil penalties assessed by the U.S. EPA and shall **not** be deductible for purposes of federal taxes.

Final Terms

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

Nothing in this CAFO shall restrict the right of Respondent to raise any administrative, legal, or equitable remedy, claim, or defense with respect to future actions for which U.S. EPA is reserving its rights.

138. Pursuant to 31 U.S.C. § 3717, the U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated 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). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of five (5) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).
139. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute U.S. EPA approval of any equipment or technology installed by Respondent in connection with the terms of this Agreement.
140. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO. In consideration of the civil penalty payments to be made by Respondent,

U.S. EPA covenants not to bring any administrative or judicial action against Respondent for civil penalties or injunctive relief based upon the allegations of this CAFO, except to enforce the terms and conditions of this CAFO.

141. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to issue such orders or to seek such injunctive relief as U.S. EPA deems necessary to protect human health or the environment, nor shall anything in this CAFO be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to take appropriate actions to address conditions that may present an imminent and substantial endangerment to human health or the environment. Nothing in this CAFO is intended to operate in any way to resolve any criminal liability of the Respondent, nor shall anything in this CAFO be construed to operate in any way to resolve any criminal liability of the Respondent. Nothing herein shall restrict the right of Respondent to raise any administrative, legal, or equitable remedy, claim, or defense with respect to future actions, if any, for which U.S. EPA is reserving its rights. Respondent hereby reserves and retains any rights, defenses, and causes of action not explicitly and specifically waived in this CAFO.
142. The effective date of this CAFO shall be the date on which this CAFO is filed with the Regional Hearing Clerk, Region 5, U.S. EPA.

143. This CAFO shall terminate thirty (30) days after Respondent's compliance with all of the terms and conditions set forth herein and Respondent's submittal of all required documentation.
144. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
145. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.
146. This CAFO constitutes the entire agreement between the parties.
147. 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.
148. This CAFO constitutes a Final Order pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
149. Each undersigned representative of a Party to this Consent Agreement and Final Order, consisting of twenty-five (25) pages, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such Party to this document.

In the Matter of: The Wm. Powell Company, Cincinnati, Ohio.

Docket No. RCRA-05-2008-0002

Consent Agreement and Final Order.

RESPONDENT

The Wm. Powell Company
2503 Spring Grove Avenue
Cincinnati, Ohio, 45214
EPA ID No. OHD 004 253 704



Frank Parker
Corporate Senior Vice-President Manufacturing

1-25-08

Date

COMPLAINANT

Land and Chemicals Division
Region 5
United States Environmental Protection Agency



Margaret Guerriero, Director
Land and Chemicals Division

2/12/08

Date

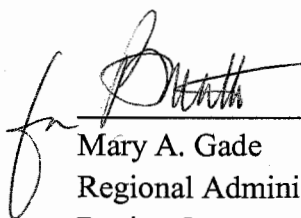
In the Matter of: The Wm. Powell Company, Cincinnati, Ohio.

Docket No. RCRA-05-2008-0002

Consent Agreement and Final Order.

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. IT IS SO ORDERED.



Mary A. Gade

Regional Administrator

Region 5

U.S. Environmental Protection Agency

77 West Jackson Boulevard

Chicago Illinois 60604-3590

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US EPA REGION V
2008 FEB 19 PM 2:34

CASE NAME: The Wm Powell Company

DOCKET NO.: RCRA-05-2008-0002

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order (CAFO)** 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.

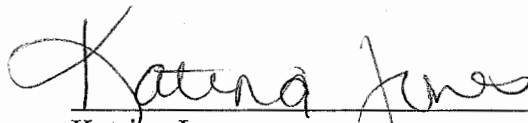
I further certify that I then caused a true and correct copy of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:

Mr. Frank Parker
Corporate Senior Vice President of Marketing
The Wm Powell Company
2503 Spring Grove Avenue
Cincinnati, OH 45214

Return Receipt # 7001 0320 0006 0185 6746

FEB 19 2008

Date: _____



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

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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.