



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 02 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Chuhay
Quality Control Manager
Merrick Industries, Inc.
10 Arthur Drive
Lynn Haven, Florida 32444-1685

SUBJ: RCRA Section 3008(a) Consent Agreement and Final Order
Docket No. RCRA-04-2013-4005(b)
Merrick Industries, Inc.
Lynn Haven, Florida 32444-1685
EPA ID#: FLD 982 171 407

Dear Mr. Chuhay:

Enclosed is a copy of the executed above referenced Consent Agreement and Final Order (CA/FO). Please note that the effective date of the CA/FO is the date the Final Order was signed. If you have any questions or comments, please contact Javier García of my staff, at (404) 562-8616, or by email at garcia.javier@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

cc: James Byer, FDEP Northwest District
Tim Bahr, FDEP
Glenn Perrigan, FDEP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2013-4005(b)
)	
Merrick Industries, Inc.)	PROCEEDING UNDER SECTION
10 Arthur Drive)	RESOURCES CONSERVATION AND
Lynn Haven, Florida 32444-1685)	RECOVERY ACT, 42 U.S.C. § 6928(a)
)	
EPA ID No.: FLD 982 171 407)	
)	
Respondent)	
_____)	

RECEIVED
EPA REGION IV
2013 MAY - 2 AM 11:50
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. §§ 403.702 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e)]. This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA for alleged violations of Fla. Stat. §§ 403.702 *et seq.*, and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated Rule (Fla. Admin. Code Ann. r.) 62-730 [Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270 and 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, which govern this action are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Merrick Industries, Inc. a corporation incorporated under the laws of the State of Florida. Respondent is the owner and operator of a facility at 10 Arthur Drive, Lynn Haven, Florida 32444-1685 ("Facility").

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), Florida has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Florida authorized program are found at Fla. Stat. § 403.702 *et seq.* and Fla. Admin. Code Ann. r. 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Florida has received final authorization for certain portions of HSWA, including those provisions cited herein.
8. Although the EPA has granted Florida authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given written notice of this action to the State before the issuance of this CA/FO.
10. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Florida program; however, for ease of reference, the federal citations will follow in brackets.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these requirements are found at Fla. Admin. Code Ann. r. 62-730.160 [40 C.F.R. Part 262].
12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)], sets forth the requirement that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 [40 C.F.R. Parts 124, 264, 265 and 270].
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a "generator" is defined as "any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation."
14. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a "facility" includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a "person" includes a corporation, partnership, or association.

16. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], an “owner” is the person who owns a facility or part of a facility and an “operator” is the person responsible for the overall operation of a facility.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)], and it meets any of the criteria specified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3(a)(2)].
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.20], solid wastes that exhibit any of the characteristics identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.21 through 261.24], are characteristic hazardous wastes, and are provided with the EPA Hazardous Waste Numbers D001 through D043.
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.30], a solid waste is a hazardous waste if it is listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D], and is not otherwise excluded by Fla. Admin. Code Ann. r. 62-730.021 [40 C.F.R. § 260.22]. Listed hazardous wastes include the F-Listed and P-Listed wastes identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.31(a) and 261.33(e)].
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(d)], a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided the generator comply with the applicable requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the “SQG Permit Exemption”).
22. Pursuant to Fla. Admin. Code Ann. r. 62-730(185) [40 C.F.R. § 273.15(c)], a small quantity handler of universal waste is required to be able to demonstrate the length of time that its universal waste has accumulated from the earliest date that any universal waste in the container became a waste or was received.

IV. EPA ALLEGATIONS AND DETERMINATIONS

23. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
24. Respondent is the owner and operator of a facility at 10 Arthur Drive, Lynn Haven, Florida 32444. Respondent generates wastes that are “solid wastes” and “hazardous wastes” as defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.2 and 261.3].
25. At the Facility, Respondent manufactures industrial machinery. Respondent reported the generation of the following hazardous wastes: D001, D008, F003 and F005.

26. In August 1991, Respondent notified the Florida Department of Environmental Protection (FDEP) as a Small Quantity Generator (SQG) of hazardous waste, meaning that it generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste per calendar month.
27. On October 17, 2012, a representative of the EPA and a representative of FDEP performed a RCRA Compliance Evaluation Inspection (CEI) of Respondent's facility. The findings of the CEI were documented in the EPA's inspection report received by the Facility on February 19, 2013.
28. At the time of the CEI, Respondent had two small containers for the accumulation of universal waste batteries that were not marked with the date when Merrick started accumulating the batteries. Furthermore, Respondent had no records to document for how long it had stored the universal waste batteries.
29. The EPA therefore alleges that Respondent violated F.A.C. Chapter 62-730.185(1) [40 C.F.R. § 273.15(c)], for failing to demonstrate the earliest date that its universal waste batteries began accumulating.
30. At the time of the CEI, a review of Respondent's hazardous waste storage area's inspection logs indicated that in 2011, Respondent stored four hazardous waste containers for longer than 180 days.
31. The EPA therefore alleges that Respondent violated Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], for storing hazardous waste without a permit or interim status for longer than 180 days.

V. TERMS OF AGREEMENT

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

32. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
33. Within thirty (30) calendar days of receipt of the executed copy of this CA/FO, Respondent shall submit to the EPA a certification signed by a duly authorized representative stating that the Facility is in compliance with the Florida hazardous waste program and RCRA and that all violations alleged in this CA/FO have been corrected.
34. This certification shall be as follows:
"I certify under penalty of law, to the best of my knowledge and belief that all violations alleged in this CA/FO have been corrected, and that the Facility is in compliance with the Florida hazardous waste program and RCRA. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
35. The certification required to be submitted under this CA/FO shall be mailed to:

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

36. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
37. Respondent waives its right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
38. Respondent waives its rights to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
39. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
40. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
41. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
42. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations and facts stipulated to in this CA/FO.
43. Each of the parties will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

44. Respondent consents to the payment of a civil penalty in the amount of \$1,700 within thirty (30) calendar days of the effective date of this CAFO.
45. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent elects to send payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-4087

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White
(301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch

RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

46. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Prior Owner must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty must 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 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).
 - b. Monthly Handling Charge. Prior Owner must 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. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Prior Owner must 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 subparagraphs (a) and (b).
47. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VIII. RESERVATION OF RIGHTS

48. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
49. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
50. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release,

or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

IX. OTHER APPLICABLE LAWS

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

X. SERVICE OF DOCUMENTS

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

Joan Redleaf Durbin, Associate Regional Counsel
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9544

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

Joseph K. Tannehill, Jr.
President and CEO
Merrick Industries, Inc.
10 Arthur Drive
Lynn Haven, Florida 32444-1685
(850) 271-7859

XI. SEVERABILITY

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

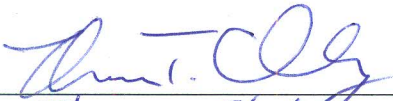
(Continued on next page)

XII. EFFECTIVE DATE


55. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Merrick Industries, Inc.

By:  Dated: 4/18/13
Print Title: Env. Mgr.

U. S. Environmental Protection Agency

By:  Dated: 4/26/13
César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

IN THE MATTER OF:)
)
Merrick Industries, Inc.)
10 Arthur Drive)
Lynn Haven, Florida 32444-1685)
)
)
EPA ID No.: FLD 982 171 407)
)
Respondent)
_____)

Docket Number: RCRA-04-2013-4005(b)

PROCEEDING UNDER SECTION
RESOURCES CONSERVATION AND
RECOVERY ACT, 42 U.S.C. § 6928(a)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 2 day of May, 2013.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and Final Order (CA/FO), in the Matter of Merrick Industries, Inc., Docket Number: RCRA-04-2013-4005(b), and served the parties listed below in the manner indicated:

Javier E. García, Environmental Engineer (Via EPA Internal Mail)
RCRA and OPA Enforcement and Compliance Branch, RCRA Division
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Quantindra Smith (Via the EPA Electronic Mail)
U.S. EPA – Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Joan Redleaf Durbin (Via EPA Internal Mail)
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

Joseph K. Tannehill, Jr. (Via Certified Mail, Return Receipt Requested)
President and CEO
Merrick Industries, Inc.
10 Arthur Drive
Lynn Haven, Florida 32444-1685

Date: 5-2-13



Pat Bullock
Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511