



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC. 27 2010

William L. Penny  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219-2376

SUBJ: Chemetall Foote Corp., New Johnsonville, Tennessee Facility  
Consent Agreement and Final Order, Docket No. RCRA-04-2011-4001(b)

Dear Bill,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CAFO) resolving the violations of the Resource Conservation and Recovery Act alleged by EPA against Chemetall Foote, Corp., New Johnsonville, Tennessee (Chemetall). Please note that payment of Chemetall's penalty is due within thirty days of the effective date of the CAFO, and Chemetall's certification of compliance is due within ten days of the effective date of the CAFO. The effective date of the CAFO is the date the CAFO is filed with the Regional Hearing Clerk.

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

Sincerely,

A handwritten signature in cursive script that reads "Joan".

Joan Redleaf Durbin  
Senior Attorney  
US EPA, Region 4

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	Docket Number: RCRA-04-2011-4001(b)
	)	
Chemetall Foote Corp.	)	
856 Foote Lane	)	Proceeding under Section 3008(a) of the
New Johnsonville, Tennessee 37134	)	Resource Conservation and
	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No. TND 981 014 962	)	
	)	
	)	
Respondent.	)	
	)	

---

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.*, and the "Tennessee Hazardous Waste Management Act of 1977", the Tennessee Code Annotated (T.C.A.) § 68-212-101 *et seq.*, as amended. This action is seeking injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and T.C.A. and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Parts 260 through 270 and Tennessee Rule (TR) Chapter 1200-01-11.

2. *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, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) & 22.18(b)(2) and (3).

3. Complainant and Respondent 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), Complainant and Respondent have agreed to the execution of this CAFO and Respondent hereby agrees to comply with the terms of this CAFO.

**II. THE PARTIES**

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

issue the instant CAFO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.

5. Respondent is Chemetall Foote Corp. (Chemetall), a corporation incorporated in the State of Delaware doing business at 856 Foote Lane, New Johnsonville, Tennessee, 37134.

6. Respondent manufactures normal (n-) and secondary (sec-) butyllithium (BuLi) in two separate production plants designated as the North Plant and the South Plant. In addition, Respondent manufactures small amounts of lithium hexamethyldisilazide and other organo metallic compounds.

### **III. PRELIMINARY STATEMENTS**

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 5, 1985, the State of Tennessee (the State) received final authorization to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The requirements of the authorized program are found T.C.A. § 68-212-101 *et seq.*, and the regulations promulgated pursuant thereto, set forth at TR Chapter 1200-01-11.

8. 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 upon their federal effective date regardless of the State's authorization status. On December 26, 2000, the State received authorization under HSWA.

9. Although EPA has granted the State of Tennessee authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Tennessee.

10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Tennessee prior to issuing this CAFO.

11. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a) and T.C.A. 68-212-101, *et seq.*, authorizes the regulation of facilities that generate hazardous waste. The implementing regulations for these requirements are found in 40 C.F.R. Part 262 and TR Chapter 1200-01-11-.03. The regulations became effective on November 19, 1980.

12. Section 3004 of RCRA, 42 U.S.C. § 6924, and T.C.A. 68-212-101, *et seq.*, sets forth standards applicable to and authorizes regulation of owners and operators of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at 40 C.F.R. Part 264 and TR Chapter 1200-1-11-.06.

13. Section 3005 of RCRA, 42 U.S.C. § 6925, and T.C.A. 68-212-101, *et seq.*, set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 40 C.F.R. Parts 264 (permitted) and 265 (interim status) and TR Chapter 1200-01-11-.05 (interim status) and 1200-01-11-.06 (permitted).

14. Pursuant to TR Chapter 1200-1-11-.02(1)(b)1(i) and 40 C.F.R. § 261.2, a "solid waste" is any "discarded material" that is not otherwise excluded by the regulations.

15. Pursuant to TR Chapter 1200-1-11-.02(1)(b)1(ii) and 40 C.F.R. § 261.2(a)(2)(i), a "discarded material" is any material which is "abandoned."

16. TR Chapter 1200-1-11-.02(1)(b)2(iii) and 40 C.F.R. § 261.2(b)(3), defines "abandoned" material as material that is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

17. Pursuant to TR Chapter 1200-1-11-.02(1)(c) and 40 C.F.R. § 261.3, a "solid waste" is a "hazardous waste" if it is not otherwise excluded by regulation and meets any of the criteria under this regulation.

18. Pursuant to TR Chapter 1200-1-11-.02(3)(b) and 40 C.F.R. § 261.21, a "solid waste" that exhibits the characteristic of ignitability is a hazardous waste with the RCRA hazardous waste code of D001.

19. Pursuant to TR Chapter 1200-1-11-.02(3)(d) and 40 C.F.R. § 261.23, a "solid waste" that exhibits the characteristic of reactivity is a hazardous waste with the RCRA hazardous waste code of D003.

20. Pursuant to TR Chapter 1200-1-11-.01(2)(a) and 40 C.F.R. § 260.10, a "generator" is any person, by site, whose act or process produces hazardous waste identified or listed in TR Chapter 1200-1-11-.02 and 40 C.F.R. Part 261 or whose act first causes a hazardous waste to be subject to regulation.

21. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and T.C.A. 68-212-108, a person cannot treat hazardous waste without a permit or interim status, unless excluded under TR Chapter 1200-1-11.07(1)(b)(4) and 40 C.F.R. § 270.1(c)(2).

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

22. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and TR Chapter 1200-01-11-.01(2)(a) and 40 C.F.R. § 260.10.

23. Respondent is the "owner" and "operator" of a "facility" as those terms are defined in TR Chapter 1200-01-11-.01(2)(a) and 40 C.F.R. § 260.10.

24. At the Facility, Respondent operates a quality control laboratory for analysis of butyllithium samples.
25. The quality control laboratory generates butyllithium sample residue solid wastes that exhibit the hazardous waste characteristics of ignitability and reactivity.
26. Therefore, the butyllithium sample residue waste is hazardous waste with the RCRA hazardous waste codes of D001 and D003.
27. On May 11, 2006, EPA and TDEC conducted a Compliance Evaluation Investigation with sampling. On January 24, 2007, EPA and TDEC conducted a follow-up Case Development Investigation/Evaluation (CDIE). The results of the CDIE were documented in a CDIE Report and Notice of Violation dated April 30, 2008.
28. During the May 11, 2006, inspection, Respondent indicated that prior to 2006 it treated the waste butyllithium samples (D001/D003), by smashing the bottles in a pit (hereinafter referred as the "Lab Pit") provoking the waste to react with air and auto-ignite.
29. Respondent is a "generator" as that term is defined in TR Chapter 1200-01-11-.01(2)(a) and 40 C.F.R. § 260.10.
30. Respondent operated a hazardous waste "treatment" unit as that term is defined in TR Chapter 1200-01-11-.01(2)(a) and 40 C.F.R. § 260.10.
31. Respondent did not have interim status or a permit to treat waste butyllithium samples (D001/D003) in the Lab Pit.
32. Respondent was not exempt from the requirement to obtain a permit for treatment of hazardous waste. Therefore, Respondent treated hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and T.C.A. 68-212-108.

#### **V. TERMS OF AGREEMENT**

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

33. Within ten (10) calendar days of receipt of the executed copy of this CAFO, Respondent shall submit to EPA and TDEC a certification signed by a responsible corporate representative stating that all hazardous waste constituents and residues have been removed from the Lab Pit. This certification shall be as follows:

"I certify under penalty of law, that to best of my knowledge and belief, and as indicated by the sampling investigation conducted in the Laboratory Pit, there is no hazardous waste residue in the Pit. 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."

30. The certification required to be submitted under this CAFO shall be mailed to:

Doug McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and to:

Mike Apple, Director  
Hazardous Waste Management Program  
Tennessee Department of Environment and Conservation  
5th Floor, L&C Tower  
401 Church Street  
Nashville, TN 37243-1535

34. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
35. The Respondent neither admits nor denies the factual allegations set out above.
36. Respondent waives its right to contest the allegations contained herein, and its right to appeal this CAFO.
37. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO on the basis of any issue related to the Paperwork Reduction Act.
38. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO.
39. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.

40. The parties agree that each party will pay its own costs and attorney's fees.
41. The parties agree that compliance with the terms of this CAFO shall resolve the violations of RCRA alleged in this CAFO.

## **VI. CIVIL PENALTY**

42. Respondent consents to the payment of a civil penalty in the amount of fifty-seven thousand dollars (\$57,000), which is to be paid in full within thirty (30) calendar days of the effective date of this CAFO.
43. Payments shall be made by company check or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of the check. Payments shall be tendered to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Financial Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If the 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) 418-1028

If paying by EFT, the 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, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 – checking  
Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington, DC 20074  
Contact: Jesse White, (301) 887-6548

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

Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8690

and to:

Javier Garcia  
RCRA Division – 10th Floor  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8690

44. If Respondent fails to remit the civil penalty as agreed to herein, 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, Respondent 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.

b. Monthly Handling Charge - Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (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, Respondent 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).

45. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

#### **VII. PARTIES BOUND**

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

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

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

#### **VIII. RESERVATION OF RIGHTS**

49. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO. Respondent reserves the right to raise any and all applicable defenses to any enforcement action for alleged future violations of RCRA.

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

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

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

53. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

54. The provisions of this CAFO shall be deemed satisfied upon Respondent's full implementation of the actions required in this CAFO.

#### **IX. OTHER APPLICABLE LAWS**

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

#### **X. SERVICE OF DOCUMENTS**

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

Joan Redleaf Durbin, Associate Regional Counsel  
OEA – 13th Floor  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8690

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

William L. Penny  
Stites & Harbison, PLLC  
Sun Trust Plaza  
401 Commerce Street  
Suite 800  
Nashville, Tennessee 37219

#### **XI. SEVERABILITY**

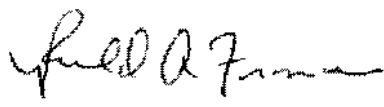
58. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or

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

**XII. EFFECTIVE DATE**

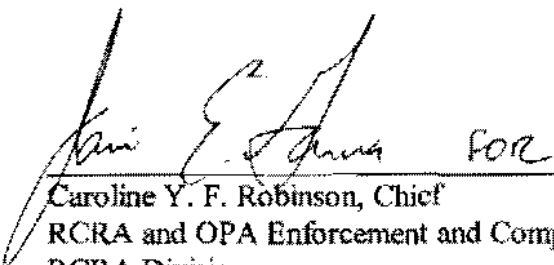
59. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

By:   
\_\_\_\_\_  
Ronald A. France, President  
Chemetall Foote Corp.  
856 Foote Lane  
New Johnsonville, Tennessee

Dated: 12-15-2010

**U.S. Environmental Protection Agency**

By:  FOR  
\_\_\_\_\_  
Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

Dated: 12/23/2010

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF	)	Docket Number: RCRA-04-2011-4001(b)
	)	
Chemetall Foote Corp.	)	Proceeding under Section 3008(a) of the
856 Foote Lane	)	Resource Conservation and
New Johnsonville, Tennessee 37134	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No. TND 981 014 962	)	
	)	
Respondent.	)	

**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 23<sup>rd</sup> day of Dec., 2010.

BY: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), In the Matter of Chemetall Foote Corporation, Docket Number: RCRA-04-2011-4001(b) on the parties listed below in the manner indicated:

Joan Redleaf Durbin  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

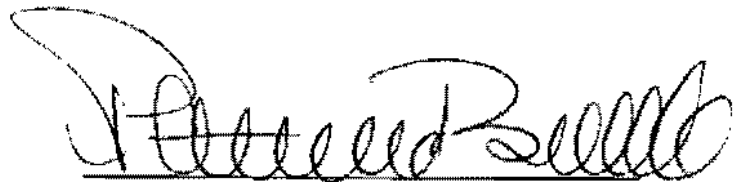
Quatindra Smith  
RCRA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

William L. Penny  
Stites & Harbison, PLLC  
Sun Trust Plaza  
401 Commerce Street  
Suite 800  
Nashville, Tennessee 37219

(Via Certified Mail - Return Receipt Requested)

Date 12-27-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511