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United States Government

memorandum

Department of Energy
Fernald Field Office

DATE: OCT 20 1993

DOE-0145-94

REPLY TO ATTN OF: FN:Osheim

SUBJECT: CONSENT AGREEMENT AND FINAL ORDER

TO: DISTRIBUTION

Attached is a copy of the fully executed Consent Agreement and Final Order (CAFO) between the U.S. Environmental Protection Agency (EPA) and Westinghouse Environmental Management Company of Ohio (WEMCO). The CAFO resolves EPA's long-standing administrative compliance proceeding against WEMCO for alleged violations of the Resource Conservation and Recovery Act (RCRA) at Fernald. It also acknowledges that Fernald is in "substantial compliance" regarding the alleged RCRA violations. WEMCO and EPA also settled on civil penalty of $95,000 which is substantially less than that proposed in the administrative complaints.

Please call me at 513-648-3133 if you have any questions.

Beth Osheim
Elizabeth L. Osheim
Chief Counsel

Attachment

cc: DOE-FN Senior Staff
William W. Wistrom, Contracting Officer, ORO, AD-423
Jennifer T. Curtis, General Counsel, FERMCO

Recycled and Recyclable

M-733 DOE (REV. 8/6/92)

Westinghouse
Electric Corporation

Victor A. Franklin
Assistant General Counsel

Law and Environmental
Affairs Department

Stanwix Street
Pittsburgh Pennsylvania 15222-1384
412 642 3553
Fax 412 642 3923

October 14, 1993

Elizabeth L. Osheim, Esq.
Chief Counsel
Department of Energy
Fernald Field Office
P. O. Box 398705
Cincinnati, OH 45239-8705

Dear Beth:

Enclosed for your files is a fully executed copy of the Consent Agreement and Final Order for the U.S. EPA v Wemco matter.

Thank you for your cooperation in resolving this matter.

Very truly yours,

Victor A. Franklin

Enclosure

LAW3:2523

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF: Westinghouse Materials Company of Ohio, Inc. EPA I.D. No. OH6 890 008 976	)	Docket No. RCRA-V-W-89-R-11 CONSENT AGREEMENT & FINAL ORDER

PREAMBLE

On February 9, 1989, the United States Environmental Protection Agency ("U.S. EPA") filed a Complaint in this matter and on December 18, 1989, filed a Motion to amend the Complaint with an attached Amended Complaint, (hereinafter "Complaints") pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6928, et seq., as amended and U.S. EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the Associate Director of the Waste Management Division, Region V, U.S. EPA. Respondent is the Westinghouse Materials Company of Ohio, Inc. ("WMCO"). On July 1, 1991, the name of WMCO was changed to Westinghouse Environmental Management Company of Ohio ("WEMCO"). For purposes of this Consent Agreement and Final Order (hereinafter "Final Order"), the term WMCO shall include both WMCO and WEMCO.

FINDINGS OF U.S. EPA

Based on the available information, including the Administrative Record in this matter, the U.S. EPA hereby finds the following:

1. Respondent does not admit any of the following Findings of U.S. EPA as contained herein.

2. RCRA defines "operator" as a person responsible for the overall operation of a Facility. 40 C.F.R. §260.10.

3. RCRA defines "person" as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body. 40 C.F.R. §260.10.

4. Respondent is a person for purposes of RCRA as defined in 40 C.F.R. §260.10 and as set out in paragraph 3, above.

5. From January 1, 1986, until November 30, 1992, Respondent was under a Management and Operating Contract (hereinafter "M & O Contract") to the United States Department of Energy ("DOE") for the Feed Materials Production Center ("FMPC" or "Facility") located at 7400 Willey Road, Fernald, Ohio 45030 (mailing address: P.O. Box 39874, Cincinnati, Ohio 45239-8704).

6. From May 12 through July 14, 1987, U.S. EPA and/or the Ohio Environmental Protection Agency ("OEPA") conducted inspections at the Facility.

7. Based on these inspections, U.S. EPA and/or OEPA issued several Notices of Violations ("NOVs") to Respondent for various violations of RCRA.

8. From July 20, 1988 through October, 1989, U.S. EPA and/or OEPA conducted inspections at the Facility.

9. Based on these inspections, U.S. EPA and/or OEPA issued NOVs to Respondent for various violations of the Ohio Administrative Code ("OAC") on July 29, 1988, February 9, 1989, and August 29, 1989.

10. U.S. EPA and OEPA found additional violations of RCRA and the OAC after reviewing Respondent's ground water monitoring reports and Ground Water Quality Assessment Program Plan.

11. On June 28, 1991, Respondent signed and submitted, as "co-operator" with DOE, a Part A application and a Part B application on October 31, 1991, for a hazardous waste permit for the Facility for the treatment, storage and handling of hazardous waste as required by OAC 3745-50 et seq. stating as follows:

> The Department of Energy has signed this certification as the owner and operator of the subject facility and the contractor has signed as co-operator of the facility. The Department has determined (U.S. Department of Energy, Secretary of Energy Notice SEN-22-90, dated 5/8/90) that dual signatures best reflect the actual apportionment of responsibility under which the Department is responsible for policy, programatic, funding and scheduling decisions, as well as general oversight; and the contractor is responsible for certain day-to-day activities which are performed by contractor employees and subcontractors, (in accordance with general directions given by the Department as part of its general oversight responsibility), such as waste analyses and handling, monitoring, recordkeeping, reporting, and contingency planning. Westinghouse Environmental Management

Company of Ohio (WEMCO) therefore executes this application as co-operator.

12. The term "co-operator" is not a term found in the RCRA statute or regulations but is interpreted by U.S. EPA as meaning an operator for purposes of RCRA.

13. In its Part A and B applications, Respondent acknowledged its responsibilities at the Facility as including hazardous waste analysis and handling, record keeping, reporting, and contingency planning.

14. Respondent and DOE have come into substantial compliance regarding the violations set out in the NOVs and the Complaints.

15. The responsibilities of Respondent as "co-operator", described in Respondent's Part A and B RCRA permit applications, and Respondent's ability to come into compliance with the pertinent requirements of RCRA and OAC since the beginning of these proceedings, reflect that Respondent was an operator of the Facility for purposes of RCRA.

STIPULATIONS OF THE PARTIES

The Parties, desiring to settle this action, enter into the following stipulations:

16. Respondent is a corporation registered under the laws of the State of Delaware and whose registered agent for activities in the State of Ohio is Prentice Hall, Westinghouse Materials Company of Ohio, Inc., 380 South Fifth Street, Columbus, Ohio 43215-5436.

17. On February 9, 1989, Respondent was served with a copy of the Complaint, Findings of Violation, and Compliance Order (Docket No. V-W-89-R-11) in this matter.

18. On March 14, 1989, Respondent filed an Answer and Request for a Hearing pursuant to 40 C.F.R. Part 22.

19. On June 30, 1989, the State of Ohio was granted final authorization by the Administrator of the U.S. EPA to administer the hazardous waste program in lieu of the Federal program pursuant to RCRA Section 3006(b), 42 U.S.C. §6926(b).

20. On December 18, 1989, U.S. EPA filed a motion to amend the Complaint. The Court has not made a determination regarding this motion.

21. On June 28, 1991, Respondent signed and submitted, as "co-operator" with DOE, a Part A hazardous waste permit application for the Facility as required by OAC 3745-50 et seq.

22. On October 31, 1991, Respondent signed and submitted, as "co-operator" with DOE, a Part B application for a waste permit application for the Facility as required by OAC 3745-50 et seq.

23. On January 22, 1993, Respondent, DOE and the State of Ohio entered into a Stipulated Amendment to the Consent Decree entered December 2, 1988 (hereinafter "Stipulated Amendment") related to actions taken regarding hazardous waste at the site including matters raised in the Complaints herein.

24. The site is in substantial compliance regarding the alleged RCRA violations cited in the Complaints.

25. In a proceeding to enforce this Final Order, Respondent will not contest the jurisdictional allegations contained in the Complaint, with the exception of any claim regarding the date on which mixed waste was subject to regulation.

26. Respondent does not admit the specific factual allegations contained in the Complaints other than the admissions made in Respondent's Answer and Request for a Hearing. Respondent waives its right to a hearing on allegations contained in the Complaint.

27. Respondent consents to this issuance of the Final Order hereinafter set forth and hereby consents to the payment of a civil penalty in the amount therein specified. However, nothing contained herein is an admission on the part of Respondent regarding liability for any of the alleged violations in the Complaints. The Respondent denies any such liability in this matter.

28. This Final Order shall become effective upon the date it is signed by the Director of the Waste Management Division, Region V, U.S. EPA.

FINAL ORDER

Based on the foregoing stipulations, the Parties agree to the entry of the following Final Order:

29. Respondent shall pay a civil penalty in the amount of NINETY FIVE THOUSAND DOLLARS ($95,000) within thirty (30) days of the effective date of this Final Order. Payment shall be made by

certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to the U.S EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Separate copies of the transmittal of the payment should be sent to: 1) the Regional Hearing Clerk, Planning and Management Division (MFA-10J); 2) the Solid Waste and Emergency Response Branch Secretary; and 3) Office of Regional Counsel (CM-3T). The address to which these copies should be sent is: U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

30. U.S. EPA may collect interest on any amounts overdue under the terms of this Final Order at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. §3717. A late payment handling charge of $10.00 will be imposed on any late payment, with an additional charge of $10.00 for each subsequent 30-day period over which an unpaid balance remains.

31. Failure to comply with any requirement of the Final Order may subject Respondent to liability for a penalty of up to TWENTY-FIVE THOUSAND DOLLARS ($25,000) for each day of continued non-compliance with the terms of the Final Order. The U.S. EPA is authorized to assess such penalties pursuant to RCRA §3008(c), 42 U.S.C. 6928(c).

32. This Final Order constitutes a settlement and final disposition of the claims contained in the Complaints filed in this case.

33. Notwithstanding any other provision of this Final Order, an enforcement action may be brought pursuant to RCRA §7003, 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 presents an imminent and substantial endangerment to human health or the environment in the future. Under such circumstances, the U.S. EPA also expressly reserves the right to take any action pursuant to the applicable provisions of OAC 3745-50 et seq., 40 C.F.R. Parts 124 and 270, and this Final Order.

34. This Final Order is not intended to create and does not create any right in any person not a party hereto.

35. This Final Order constitutes full settlement and compromise and satisfaction of the claims alleged in the Complaints in this matter. U.S. EPA hereby releases Respondent, and any past or present officer, director, employee, agent or contractor (and any past or present officer, director, official, employee, agent or subcontractor of such contractor) of WMCO from any and all liability arising out of the allegations and claims set forth in said Complaints.

36. Nothing contained in this Final Order shall be deemed to constitute an admission of liability nor an admission of violation of any law or regulation by WMCO nor an admission of U.S. EPA jurisdiction over WMCO with respect to the subject matter of the Complaints.

SIGNATORIES

Each undersigned representative of a party to this Consent Agreement and Final Order in the matter of Westinghouse Materials Company of Ohio, Inc., 7400 Willey Road, Fernald, Ohio 45030, and consisting of nine (9) pages, certifies that he or she is fully authorized to enter into the terms and conditions of this Final Order and to legally bind such party to this document.

By: _____
Westinghouse Materials
Company of Ohio, Inc.,
Respondent

Title PRESIDENT

Agreed to this 27 day of September, 1993.

By: _____
Norman R. Niedergang, Associate Director
Office of RCRA
Waste Management Division
U.S. Environmental Protection Agency
Region V,
Complainant

Agreed to this 29th day of September, 1993.

The above being agreed and consented to, it is so ordered this 29th day of September, 1993

By: _____
William E. Muno, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing CAFO to be served upon the person designated below on the date below, by causing said copy to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois in an envelope addressed to:

Mr. Vincent B. Stamp
Dismore and Shohl
1900 Chemed Center
255 E. Fifth St.
Cincinnati, OH 45202

I have further caused the original of the CAFO and this Certificate of Service to be served in the Office of the Regional Hearing Clerk, located in the Planning and Management Division, U.S. EPA, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604, on the date below.

This is said person's last known address to the subscriber.

Dated this 30th day of September 1993.

Cinita Perry
Secretary, RCRA Enforcement Branch
U.S. EPA, Region V