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

DEC 18 2008

4WD-RCRA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kay Rykowski
Industrial Container Services, LLC
1385 Blatt Boulevard
P.O. Box 535
Blacklick, Ohio 43004

Subj: EPA v. Industrial Container Services, LLC.
Docket No.: RCRA-04-2008-4019(b)

Dear Ms. Rykowski:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) that resolves the Resource Conservation and Recovery Act matter for Industrial Container Services, LLC. The CA/FO has been filed with the Regional Hearing Clerk and is effective on today's date. EPA has already received your penalty payment of $13,335 on December 1, 2008.

If you have any questions, please call me at 404-562-9569.

Sincerely,

Catherine Winokur

Catherine Winokur
Associate Regional Counsel

Enclosure

cc: Daphne Neel, SCDHEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:	)	Docket Number: RCRA-04-2008-4019(b)
	)	
Industrial Container Services- SCII, LLC (ICS)	)	Proceeding under Section 3008(a)
2819 Industrial Avenue	)	of the Resource Conservation and
Charleston, South Carolina 29405	)	Recovery Act, 42 U.S.C. § 6928(a)
	)	
EPA ID No.: SCD 003 339 702	)	
	)	
Respondent.	)	
	)	

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2008 DEC 18 AM 11:19
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). This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (CFR), Parts 260 through 270; and the South Carolina Hazardous Waste Management Regulations (SCHWMR) R. 61-79.

2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 CFR 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 CFR §§ 22.13(b) and 22.18(b)(2).

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), Complainant and Respondent 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 & OPA Enforcement & Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is Industrial Container Services -SCII, LLC (ICS), a facility operating at 2819 Industrial Avenue, Charleston, South Carolina, and registered to do business in the State of South Carolina.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on November 22, 1985, the State of South Carolina received final authorization from EPA to carry out certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. On October 16, 1995, the State of South Carolina received final authorization for the Hazardous and Solid Waste Amendments (HSWA) portion of RCRA. The South Carolina Department of Health and Environmental Control (SCDHEC) is charged with the statutory duty of enforcing the law of the State of South Carolina relating to hazardous waste management under SCHWMR § R61 79.124, 79.124, 79.270, and 79.260 – 264. Therefore, for the purpose of this Order, a citation hereinafter to the requirements of 40 CFR Parts 124, 270, and 260 – 268 shall constitute a citation to the equivalent requirements of SCHWMR.

7. Although EPA has granted the State of South Carolina authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State of South Carolina.

8. 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 South Carolina before issuance of this CA/FO.

9. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator of EPA to promulgate regulations establishing standards applicable to generators of hazardous waste. Pursuant to that provision, EPA promulgated 40 CFR Part 262 – Standards Applicable to Generators of Hazardous Waste. The regulations became effective on November 19, 1980.

10. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. These standards include establishing financial assurance as may be necessary. Pursuant to that provision, EPA promulgated 40 CFR parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The regulations became effective on May 19, 1980.

11. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations establishing standards applicable to treatment, storage, and disposal facilities of hazardous waste. These standards include establishing financial assurance as may be necessary. Pursuant to that provision, EPA promulgated 40 CFR parts 264/265 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The regulations became effective on May 19, 1980.

12. Pursuant to 40 CFR § 264.145 and SCHWMR R.61-79.264.145, the owner or operator of each facility must establish financial assurance for post-closure care of the facility.

IV. EPA ALLEGATIONS AND DETERMINATIONS

13. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 CFR § 260.10.

14. Respondent is the "owner" and "operator" of a "facility" located at 2819 Industrial Avenue, Charleston, South Carolina (the "Facility"), as those terms are defined in 40 CFR § 260.10.

15. On August 1, 2007, SCDHEC representatives conducted a RCRA compliance evaluation inspection of Respondent's Facility.

16. On August 16, 2007, SCDHEC drafted an inspection report from the August 1, 2007, inspection which cited several deficiencies of SCHWMR R.61-79.262.11 [40 CFR § 262.11] for failure to make hazardous waste determinations on solid wastes.

17. On September 15, 2007, Respondent responded to SCDHEC's August 16, 2007, inspection report in writing.

18. Pursuant to SCHWMR R.61-79.262.11 [40 CFR § 262.11], a person that generates a solid waste must determine if that waste is a hazardous waste. Based on the August 16, 2007, inspection report and Respondent's response to that inspection report, EPA alleges that Respondent failed to make ten (10) hazardous waste determinations on ten (10) different drums of solid wastes. Therefore, EPA alleges Respondent violated SCHWMR R.61-79.262.11 [40 CFR § 262.11].

19. Respondent has been operating as an interim status facility. In 2005 Respondent applied for a Post Closure Permit from SCDHEC. During the application process, SCDHEC determined that Respondent failed to have a Standby Trust Agreement to accompany the Letter of Credit for the time period of October 29, 2006, through September 17, 2007. Therefore, EPA alleges Respondent violated SCHWMR R.61-79.264.145(d)(3) [40 CFR § 264.145(d)(3)] for a period of three hundred and thirty-two (332) days.

V. TERMS OF AGREEMENT

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

20. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above.

21. Respondent neither admits nor denies the factual allegations or legal conclusions set forth above.

22. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

23. Respondent waives its right 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.

24. Respondent waives any right it may have pursuant to 40 CFR § 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 CA/FO.

25. 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.

26. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.

27. Each party will pay its own costs and attorney's fees.

A. PAYMENT OF CIVIL PENALTY

28. Respondent consents and agrees to the payment of a civil penalty in the amount of THIRTEEN THOUSAND THREE HUNDRED AND THIRTY-FIVE DOLLARS ($13,335), payable within 30 calendar days after the effective date of this CA/FO.

29. Respondent shall make payment of the penalty by cashier's check or certified check, made payable to: **Treasurer, United States of America**. Respondent shall reference the facility name and the docket number for this matter on the face of the check, and shall be tendered, if by U.S. Postal Service, to:

United States Environmental Protection Agency
Fines and Penalties, Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

or if by commercial express delivery service to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 Respondent chooses the On Line Payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North Enforcement & Compliance Section
RCRA/OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

30. 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 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 in accordance with 4 CFR § 102.13(c).

(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 30 calendar day period over which an unpaid balance remains.

(c) Non-Payment Penalty. On any portion of a civil penalty more than 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).

31. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

B. INJUNCTIVE RELIEF

32. For any drum or container that is received on-site that does not meet the definition of "RCRA Empty" (unacceptable drum or container) pursuant to 40 CFR § 261.7(b)(1), the facility must comply with the following:

    1. Immediately upon unloading an unacceptable drum or container onto the unloading dock, the drum or container must be labeled "Reject/Unacceptable – Return to Generator" and marked with the current date;
    2. Respondent must within forty-five (45) days from the day the Reject/Unacceptable drum or container is received on-site ship it off-site back to the original generator;
    3. While the Reject/Unacceptable drum or container is stored on-site, it must be stored in the fenced cage at the front warehouse adjacent to the unloading dock and weekly inspections must be conducted of the Reject/Unacceptable drum or container in accordance with 40 CFR § 264.174.
    4. If Respondent is unable to return the Reject/Unacceptable drum or container to the original generator within the forty-five (45) days, Respondent must take ownership of the Reject/Unacceptable drum or container and become the generator of record or request an extension from SCDHEC. If no extension has been requested or if SCDHEC does not grant an extension, Respondent must immediately make a hazardous waste determination on the contents of the Reject/Unacceptable drum or container. If the contents are hazardous, Respondent must manage that drum or container as a hazardous waste and not store on-site for more than 90 (ninety) days after becoming generator of the waste. The ninety (90) day time frame starts forty-five (45) days after initially receiving the Reject/Unacceptable drum or container on-site, if an extension from SCDHEC has not been granted.

VI. RESERVATION OF RIGHTS

33. 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 any other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondents' facility may present an imminent and substantial endangerment to human health or the environment.

34. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in this CA/FO.

35. 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.

36. 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.

37. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

VII. PARTIES BOUND

38. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its offieers, directors, employees, agents and all persons, including independent contraetors, eontractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

39. No ehange in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

40. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. SEVERABILITY

41. 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.

IX. OTHER APPLICABLE LAWS

42. 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

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

Cathy Winokur
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9569

XI. TERMINATION AND SATISFACTION

44. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully satisfied the requirements of this CA/FO.

XII. EFFECTIVE DATE

45. 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:

Industrial Container Services - SCII, LLC (ICS)

By: Kay Rykowski Dated: November 19, 2008

(print name) KAY RYKOWSKI

U.S. Environmental Protection Agency

By: Caroline Y.F. Robinson Dated: December 2, 2008
Caroline Y.F. Robinson, Chief
RCRA/OPA Enforcement and Compliance Branch
RCRA Division

In the Matter of Industrial Container Services - SCII, LLC (ICS)
Docket Number: RCRA-04-2008-4019(b)

Industrial Container Services - SCII, LLC (ICS) 2819 Industrial Avenue Charleston, South Carolina 29405 EPA ID No.: SCD 003 339 702 Respondent.	)	Proceeding under Section 3008(a) of the Resource 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 CFR Part 22. 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 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 16th day of December, 2008.

BY: _____
J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that on DEC 1 8 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Industrial Container Services - SCII, LLC (ICS), Docket Number: RCRA-04-2008-4019(b), and that on DEC 1 8 2008 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

(Via EPA's internal mail)

Cathy Winokur
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via Certified Mail- Return Receipt Requested)

Kay Rykowski
Industrial Container Services, LLC
1385 Blatt Boulevard
P.O. Box 535
Blacklick, Ohio 43004

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511