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

NOV 2 7 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7015 1520 0002 4890 2460
RETURN RECEIPT REQUESTED

Ms. Linda Benfield
Attorney
Foley & Larder, LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

Re: Notice of Violation

Pertaining to: Greif, Inc., and Container Life Cycle Management, LLC (d/b/a Mid-America Steel Drum)
Hereinafter: "Greif" and "CLCM"

Addresses:	2300 W. Cornell Street Milwaukee, WI	8570 S. Chicago Ave. Oak Creek, WI	3950 S. Pennsylvania Ave. St. Francis, WI
EPA IDs:	WIR000162438	WID045953189	WIR000131367
Hereinafter:	"Milwaukee"	"Oak Creek"	"St. Francis"

Dear Ms. Benfield:

As handlers and generators of solid waste that is potentially hazardous, the above facilities are subject to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (RCRA). In order to evaluate each facility's compliance with certain provisions of RCRA and its implementing regulations related to the generation, transport, storage, and treatment of hazardous waste, representatives of the U.S. Environmental Protection Agency inspected the Milwaukee facility on February 24, 2017; the St. Francis facility on February 28, 2017; and, the Oak Creek facility on March 2, 2017. EPA also conducted sampling investigations at the Milwaukee, St. Francis and Oak Creek facilities on May 4, 2017. On July 17, 2017, EPA conducted an off-site sampling event in the neighboring area of the St. Francis facility. Copies of the inspection reports and attendant sample results are enclosed for your reference.

Subsequent to the investigations noted above, EPA issued an information request to Foley & Lardner, LLP, pertaining to each of the subject facilities on June 28, 2017. You responded on behalf of those facilities in submittals dated July 26, 2017, August 9, 2017, and September 11, 2017.

Based on information provided by you or the subject facilities, on the inspectors' observations, and on the results of samples taken during the investigations, EPA has determined that the Milwaukee, St. Francis, and Oak Creek facilities have unlawfully stored hazardous waste without RCRA licenses

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or interim status. The Oak Creek facility has, in addition, unlawfully treated hazardous waste in an incinerator without a RCRA license or interim status.

EPA has further determined that the Milwaukee, St. Francis, and Oak Creek facilities violated RCRA requirements related to hazardous waste determinations and hazardous waste activity notifications.

1. TRANSPORTATION OF HAZARDOUS WASTE

Per Wisconsin statute section 291.23(1) [42 U.S.C. § 6923] and Wisc. Admin. Code chapter NR 663 [40 C.F.R. part 263][1]:

If transportation of hazardous waste within the state of Wisconsin requires a manifest under Wisc. Admin. Code chapter NR 662 [40 C.F.R. part 262], then Wisc. Admin. Code chapter 663 [40 C.F.R. part 263] is applicable to the persons conducting the transportation. *See*, Wisc. Admin. Code § NR 663.10 [40 C.F.R. § 263.10].

Tractor trailers originating from the CLCM facilities disperse to each vendor and remain with the vendor while it is loaded with containers that are to be refurbished. When the vendor has completed the load, CLCM drivers are dispatched to bring the trailers back to the Milwaukee, St. Francis, or Oak Creek facilities. The vendor signs a document upon release stating that the containers are "empty" as that term is used in Wisc. Admin. Code § NR 661.07 [40 C.F.R. § 261.7]. The vendor has no reasonable expectation again to receive that container and its contents and, therefore, that container and its contents are discarded by being abandoned within the meaning of Wisc. Admin. Code § NR 661.02 [40 C.F.R. § 261.2].

At the CLCM facilities, operators remove the containers from the trailers. The CLCM operator determines whether or not the container meets the requirements of "empty" at that time, and sets aside those containers that are considered "heavy" (i.e., not "empty") in a designated area. These "heavy" containers are then picked up by the vendor, who is charged a nominal service fee for including containers that were not "empty" in the original load to CLCM.

Containers from vendors which are not "empty" may contain a solid waste. The point of generation for that waste was when and where the vendor discarded the material with the container that was to be refurbished. A hazardous waste determination was to have been made at that point of generation. Therefore, the containers which are not "empty," which contain hazardous waste, and which are transported from the vendor to CLCM or in between CLCM sites, is transportation of a hazardous waste.

On May 4, 2017, representatives of the EPA observed and took samples of "heavy" containers that were in storage at each of the three CLCM sites. Relevant observations and results of those samples are as follows:

- At the Milwaukee facility, a tote labeled as "Heavy" was also marked as "Corrosive" containing Rocima BT 2S Microbiocide, which has a pH range between 12 and 13.5 indicating a corrosive hazardous waste (D002).

[1] The federal regulations cited for reference purposes throughout this Notice were in effect during the time of the initial inspections at each of these facilities and pre-date the Generator Improvement Rule published in the Federal Register on November 28, 2016 with an effective date of May 30, 2017.

- At the St. Francis facility, three "heavy" containers were found to be holding ignitable (D001) hazardous waste, one of which was also corrosive (D002) hazardous waste.

- At the Oak Creek facility, three "heavy" containers were found to be holding ignitable (D001) hazardous waste, two of which were also characteristically hazardous for benzene (D018).

At the Milwaukee, St. Francis, and Oak Creek facilities, EPA found containers designated by CLCM as not "empty" holding hazardous waste. A manifest had been required to ship these containers to CLCM. Therefore, CLCM had transported hazardous waste to each of these three facilities without complying with Wisc. Admin. Code chapter 663 [40 C.F.R. part 263].

2. <u>STORAGE OF HAZARDOUS WASTE WITHOUT A LICENSE</u>

Per Wisconsin statute section 291.25(2) [42 U.S.C. § 6925] and Wisc. Admin. Code chapter NR 670 [40 C.F.R. part 270]:

- A license is required for the operation of a treatment, storage or disposal facility where any hazardous waste identified or listed in Wisc. Admin. Code chapter NR 661 [40 C.F.R. part 261] is managed. *See*, Wisc. Admin. Code § NR 670.001(3) [40 C.F.R. § 270.1(c)].

- Specifically, owners and operators that store containers of hazardous waste shall provide information in their license application regarding containment, storage of solids, management of incompatible wastes, and air emission control equipment. *See*, Wisc. Admin. Code § NR 670.015 [40 C.F.R. § 270.15].

As stated in Item 1, above, containers from vendors which are not "empty" may contain a solid waste. The point of generation for that waste was when and where the vendor discarded the material with the container that was to be refurbished. A hazardous waste determination was to have been made at that point of generation. Note, the vendor is not required by CLCM to pick up containers designated by CLCM as "heavy" within a specific time frame (e.g., within 24 hours of receipt); and often, according to CLCM, the containers are held at the site for up to two weeks. Therefore, the containers which are not "empty," which contain hazardous waste, and which are kept either in trailers or in designated areas at the Milwaukee, St. Francis, and Oak Creek facilities are in storage.

On May 4, 2017, representatives of the EPA observed and took samples of "heavy" containers that were in storage at each of the three CLCM sites. Relevant observations and results of those samples are as follows:

- At the Milwaukee facility, a tote labeled as "Heavy" was also marked as "Corrosive" containing Rocima BT 2S Microbiocide, which has a pH range between 12 and 13.5 indicating a corrosive hazardous waste (D002).

- At the St. Francis facility, three "heavy" containers were found to be holding ignitable (D001) hazardous waste, one of which was also corrosive (D002) hazardous waste.

- At the Oak Creek facility, three "heavy" containers were found to be holding ignitable (D001) hazardous waste, two of which were also characteristically hazardous for benzene (D018).

At the Milwaukee, St. Francis and Oak Creek facilities, EPA found containers designated by CLCM as not "empty" holding hazardous waste. CLCM had not applied for hazardous waste storage licenses for any of these facilities.

3. FAILURE TO MAKE HAZARDOUS WASTE DETERMINATIONS OR TO MAKE ACCURATE HAZARDOUS WASTE DETERMINATIONS

Under Wis. Admin. Code § NR 662.011 [40 C.F.R. § 262.11], a generator must determine whether its waste is hazardous at the point of generation.

When and where residue is removed from an "empty" container is a new point of waste generation requiring a waste determination. CLCM failed to make waste determinations on the residues as they were removed from containers CLCM had determined to be "empty" as indicated below.

- At the Milwaukee site, residues from "empty" totes varying in size between 275 and 330 gallons, are removed via vacuum and/or by flushing with cleaner ("pre-flush"). Upon removal, a waste determination is required for the residue prior to comingling with other wastes or undergoing other treatment processes. Sample results from the May 4, 2017 sampling event show that residue that was to be vacuumed out, washed out, or otherwise removed from an "empty" tote was ignitable (D001) and corrosive (D002) hazardous waste.

- At the Oak Creek site, residues from containers CLCM has determined to be "empty" may exit onto a conveyor belt that leads into a furnace. For residue that no longer remains in the containers, a waste determination is required prior to treatment in the furnace. Samples of residues with a solvent-like consistency from two containers that were pulled from the conveyor leading to the furnace and were designated by CLCM to be "empty," were taken during the May 4, 2017 sampling event. The results indicate that the residues were ignitable (D001) hazardous wastes, one of which was also characteristically hazardous for methyl ethyl ketone (D035).

Further, CLCM made inaccurate waste determinations for certain additional wastes generated at their sites.

- At the Milwaukee site, sample results from the May 4, 2017 sampling event show that a tote of combined residues which were vacuumed from "empty" totes and which was labeled "Non-Regulated," contained ignitable (D001) hazardous waste. Additionally, a tote of spent "pre-flush" contained ignitable (D001) hazardous waste.

- At the St. Francis site, sample results from the May 4, 2017 sampling event show that a 55-gallon drum of bottoms from a wash tank clean-out contained corrosive (D002) hazardous waste. At the time of the sampling event, the drum was labeled as "Non-Hazardous."

- At the Oak Creek site, sample results from the May 4, 2017 sampling event show that three 55-gallon drums accumulating consolidated silicone residues at the furnace dock held ignitable (D001) hazardous waste. One of these containers held waste that was also characteristically hazardous for benzene (D018). The containers were not labeled at the time of the inspection and records indicate this material had been sent off-site as non-hazardous waste. Additionally, one 55-gallon drum of clear liquid with a black inky residual, which employees at the furnace dock indicated was a consolidation drum for "water" held ignitable (D001) hazardous waste.

4. TREATMENT OF HAZARDOUS WASTE WITHOUT A LICENSE

Per Wisconsin statute section 291.25(2) [42 U.S.C. § 6925] and Wisc. Admin. Code chapter NR 670 [40 C.F.R. part 270]:

A license is required for the operation of a treatment, storage or disposal facility where any hazardous waste identified or listed in Wisc. Admin. Code chapter NR 661 [40 C.F.R. part 261] is managed. *See*, Wisc. Admin. Code § NR 670.001(3) [40 C.F.R. § 270.1(c)].

Specifically, owners and operators that treat hazardous wastes which exhibit characteristics or contain hazardous constituents listed in Wisc. Admin. Code chapter 661 NR Appendix VIII [40 C.F.R. part 261 Appendix VIII] in an incinerator shall provide information in their license application in accordance with the requirements of Wisc. Admin. Code § NR 670.019 [40 C.F.R. § 270.19].

- At the Oak Creek site, residues from containers CLCM has determined to be "empty" may exit onto a conveyor belt that leads into a furnace. Samples of residues with a solvent-like consistency from two containers that were pulled from the conveyor leading to the furnace and were designated by CLCM to be "empty," were taken during the May 4, 2017 sampling event. The results indicate that the residues were ignitable (D001) hazardous wastes, one of which exhibited the toxicity characteristic of methyl ethyl ketone (D035).

5. FAILURE TO DOCUMENT HAZARDOUS WASTE DETERMINATIONS

Under Wisc. Admin. Code § NR 662.040 [40 C.F.R. § 262.40(c)], a generator shall keep records of any test results, waste analyses or other determinations made in accordance with Wisc. Admin. Code § NR 662.011 [40 C.F.R. § 262.11] for at least 3 years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.

The following wastes generated at Milwaukee, St. Francis, and Oak Creek were being managed as non-hazardous waste, non-regulated waste, or used oil. Documentation containing information supporting these determinations was not provided for review during the inspections or in submittals provided after the inspections.

- At the Milwaukee facility:
  i. Cleaners/surfactants/soaps – declared non-regulated on profile dated November 11, 2016;
  ii. Pre-Flush – declared non-hazardous on profile dated April 5, 2017
  iii. Pre-Flush solids – observed during the May 4, 2017 sampling event in 55-gallon drums marked as "Non-Regulated"; and

iv. Wash Water – declared non-hazardous on profile dated March 30, 2017.

- At the St. Francis facility:
  i. Cleaners/soaps/surfactants – declared non-hazardous in undated profile;
  ii. Blaster dust – declared non-hazardous on a September 16, 2016 profile; and,
  iii. Waste oil – No information provided.

- At the Oak Creek facility:
  i. Drum Content – declared non-hazardous on a profile dated February 23, 2017;
  ii. Paint Filters – declared non-hazardous on a profile dated May 9, 2017;
  iii. Silicone Waste – declared non-hazardous on a profile dated February 23, 2017;
  iv. Blast Media – No information provided
  v. Bag house filters and dust – No information provided; and,
  vi. Paint-related wastes – No information provided.

6. FAILURE TO SUBMIT ACCURATE INITIAL OR SUBSEQUENT NOTIFICATIONS

Under Wisc. Admin. Code §§ NR 662.012, 663.011, and 664.0011 [40 C.F.R. §§ 262.12, 263.11, and 264.11], a generator, transporter, or owner/operator of a hazardous waste management facility must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number (i.e., notifying of hazardous waste activity). Similarly, under Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), the generator, transporter or owner/operator of a facility must submit a preliminary notification of current hazardous waste activities at the facility and, if necessary, a subsequent notification of hazardous waste activities if the preliminary notification did not include all current activities.

- At the time of the February 24, 2017 inspection at the Milwaukee facility, CLCM had not completed a notification of hazardous waste activity to obtain an EPA identification number. Subsequent analysis of existing waste streams managed at the facility indicated the Milwaukee facility had generated, stored, and offered for transport, hazardous waste without having an EPA identification number. In March 2017, the Milwaukee facility applied for and obtained an EPA identification number and notified as a small quantity generator. The Milwaukee facility has not to date notified as a transporter (as identified in Item 1, above) or as a storage facility (as identified in Item 2, above).

- For the St. Francis facility, records of notifications of hazardous waste activity indicate CLCM notified as a small quantity generator or a very small quantity generator of hazardous waste between March 2017 and August 2017. During the May 4, 2017 sampling event, over a dozen 55-gallon drums and containers of hazardous waste were observed at the facility. The drums and containers held in total more than 1,000 kilograms of D009 hazardous waste that had been generated at the facility in April 2017. The St. Francis facility operated as a large quantity generator of hazardous waste during at least the month of April 2017 and failed to submit an accurate subsequent notification of hazardous waste generator activity at that time. Additionally, the St. Francis facility has not to date notified as a transporter (as identified in Item 1, above), or as a storage facility (as identified in Item 2, above).

- For the Oak Creek facility, records of notification of hazardous waste activity indicate CLCM notified as a small quantity generator as of March of 2017. The Oak Creek facility has not to

date notified as a transporter (as identified in Item 1, above), as a storage facility (as identified in Item 2, above) or as a treatment facility (as identified in Item 4, above).

CONCLUSION

According to Section 3008(a) of RCRA, 42 U.S.C. § 6928, EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both. Although this letter is not such an order or a request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, we request that you submit a response in writing to us no later than 30 days after receipt of this letter documenting the actions, if any, which you have taken since the inspection to establish compliance with the above requirements. You should submit your response to Brenda Whitney, U.S. EPA, Region 5, 77 West Jackson Boulevard, LR-17J, Chicago, Illinois 60604.

If you have any questions regarding this letter, please contact Ms. Whitney, of my staff, at 312-353-4796, or at whitney.brenda@epa.gov.

Sincerely,

for | Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Michael Ellenbecker, WDNR (Michael.Ellenbecker@wisconsin.gov)
Ann Van Grinsven, WDNR (Anne.VanGrinsven@wisconsin.gov)