

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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 ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
D & J Plating, Inc.)
)
 206 S.E. Magazine Road)
 Ankeny, Iowa 50021-3501)
)
 RCRA I.D. No. IAD075838987)
)
 Respondent.)
)
 Proceeding under Section 3008(a) and (g) of)
 The Resource Conservation and Recovery Act,)
 as amended, 42 U.S.C. § 6928(a) and (g))
 _____)

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2006-0239

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and D & J Plating, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's 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 (Part 22).

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of EPA, Region VII, pursuant to the following delegations: EPA Delegation No. 8-9-A, dated May 11, 1994; EPA Delegation No. R7-8-9-A, dated June 14, 2005; and EPA Delegation No. R7-Div-8-9-A, dated June 15, 2005.

4. The Respondent is D & J Plating, Inc. (D & J), a company incorporated under the laws of Iowa and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

5. The State of Iowa has not been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, RCRA and the federal hazardous waste regulations promulgated thereunder are directly enforceable by EPA in the State of Iowa. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004.

Factual Background

7. Respondent is an Iowa corporation authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent owns and operates an electroplating and electropolishing facility located at 206 SE Magazine Road, Ankeny, Iowa 50021-3501.

9. Respondent generates hazardous waste as a result of its operations. Specifically, Respondent generates wastewater treatment sludge from its electroplating operations.

10. Wastewater treatment sludge from electroplating operations is a "solid waste" and also a "hazardous waste" within the meaning of 40 C.F.R. Part 261.

11. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in paragraph 10. Wastewater treatment sludge from electroplating operations is classified as a hazardous waste bearing the waste code F006.

12. Respondent is a generator of hazardous waste, as that term is defined in 40 C.F.R. § 260.10.

13. On or about June 13, 2005, an EPA representative conducted a Compliance Evaluation Inspection (CEI) of the D & J Plating, Inc. facility. At that time, D & J was generating and storing hazardous waste, including F006 wastewater treatment sludge. Respondent had generated more than one hundred (100) kilograms but less than one thousand (1,000) kilograms of hazardous waste in a calendar month, and was therefore a small quantity generator of hazardous waste subject to the requirements of 40 C.F.R. § 262.34(d).

14. Respondent has never obtained a permit to operate the facility as a hazardous waste treatment, storage or disposal facility.

Violations

15. Complainant hereby incorporates the allegations contained in paragraphs 7 through 14 above, as if fully set forth herein.

Count 1

Operation of a Hazardous Waste Storage Facility Without a RCRA Permit

Illegal Storage of Hazardous Waste

16. The regulations at 40 C.F.R. § 262.34(f) state that a small quantity generator who accumulates hazardous waste for more than 180 days (or 270 days if the generator must transport the waste a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless it has been granted an extension to the 180 day (or 270 day, if applicable) time period.

17. Respondent transports waste more than 200 miles for disposal at Peoria Disposal Company in Peoria, Illinois. Thus, Respondent's maximum accumulation time is 270 days.

18. Section 3005 of RCRA, 42 U.S.C. § 6925, requires each person owning or operating a facility for the treatment, storage or disposal of hazardous waste identified or listed under Subchapter III of RCRA to have a permit issued pursuant to Section 3005 of RCRA.

19. Respondent stored two containers of F006 hazardous waste, stored in the laboratory area of the facility at the time of the inspection, from December 5, 2003, through July 27, 2005, or more than 270 days.

20. Respondent has not obtained a permit to operate a hazardous waste storage facility pursuant to Section 3005 of RCRA.

21. Respondent's storage of hazardous waste for over 270 days constitutes the operation of a hazardous waste storage facility without a permit, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Comply With Generator Requirements

22. The regulations at 40 C.F.R. § 262.34(d) state that a generator may accumulate hazardous waste on-site for 180 days (or 270 days if transporting waste 200 miles or more) without a permit or without having interim status, provided conditions listed in 40 C.F.R. § 262.34(d) are met.

23. Photographs taken during the June 2005 CEI show that two containers of F006 hazardous wastes were not labeled with the accumulation start date, were not labeled as "hazardous waste," and were not stored with covers or lids. A third container, a cardboard box accumulating F006 waste from the sludge press, was also stored without a cover or lid.

24. At the time of the June 2005 CEI Respondent was not meeting the following conditions:

Failure to close hazardous waste storage containers

25. The regulations at 40 C.F.R. § 262.34(d)(2) state that a generator may accumulate hazardous waste on-site in containers for 180 days (or 270 days if transporting waste 200 miles or more) provided the containers meet the requirements for container storage found at 40 C.F.R. Part 265, Subpart I. This includes the requirement, found at 40 C.F.R. § 265.173 that hazardous waste containers must remain closed except when adding or removing hazardous waste.

26. At the time of the June 2005 CEI the EPA representative observed and photographed three open containers of hazardous waste. Two (2) containers of F006 hazardous waste in the laboratory area were open and one (1) cardboard box of F006 hazardous waste accumulating waste from the sludge press was open. At the time of the inspection, no hazardous waste was being added or removed from any of these three open containers.

Failure to date containers of hazardous waste

27. 40 C.F.R. § 262.34(d)(4) requires a generator accumulating hazardous waste on-site for 180 days (or 270 days if transporting waste 200 miles or more) to comply with the requirements of paragraphs (a)(2) and (a)(3) of 40 C.F.R. § 262.34. 40 C.F.R. § 262.34(a)(2) requires generators to clearly mark each hazardous waste container with the date upon which accumulation begins.

28. At the time of the June 2005 CEI the EPA representative observed and photographed two (2) containers of F006 hazardous waste in the laboratory area which had not been marked with the accumulation start date.

Failure to label containers with the words "hazardous waste"

29. 40 C.F.R. § 262.34(d)(4) requires a generator accumulating hazardous waste on-site for 180 days (or 270 days if transporting waste 200 miles or more) to comply with the requirements of paragraphs (a)(2) and (a)(3) of 40 C.F.R. § 262.34. 40 C.F.R. § 262.34(a)(3) requires generators to clearly mark each hazardous waste container with the words "hazardous waste."

30. At the time of the June 2005 CEI the EPA representative observed and photographed two (2) containers of F006 hazardous waste in the laboratory area which had not been marked with the words "hazardous waste."

Failure to post emergency information

31. 40 C.F.R. § 262.34(d)(5)(ii) requires generators accumulating hazardous waste on-site for 180 days (or 270 days if transporting waste 200 miles or more) to post the following information next to the telephone:

- a) The name and telephone number of the emergency coordinator;
- b) The location of fire extinguishers and spill control material, and, if present, fire alarm; and
- c) The telephone number of the fire department, unless the facility has a direct alarm.

32. At the time of the June 2005 CEI the EPA representative observed that the information required by 40 C.F.R. § 262.34(d)(5)(ii) was not posted next to the telephone at the facility.

33. Respondent's failure to comply with the conditions set forth in 40 C.F.R. §§ 262.34(c) and (d), which are alleged in paragraphs 22 through 32, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

34. At the time of the June 2005 CEI Respondent did not have a permit nor had Respondent obtained interim status to operate a hazardous waste treatment, storage or disposal facility. Respondent still has not obtained a permit or interim status pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

35. Respondent's operation of a hazardous waste treatment, storage, and/or disposal facility without a permit, alleged in paragraphs 16 through 34, is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order. The terms of the Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and waives its right to appeal the Final Order set forth below.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. Respondent certifies by the signing of this Consent Agreement and Final Order that its facility at 206 S.E. Magazine Road in Ankeny, Iowa, is in compliance with Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6939e, and the regulations promulgated thereunder.

7. The effect of settlement described below in paragraph 10 of this Consent Agreement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 6 of this Consent Agreement.

8. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of \$2,700 plus interest, as set forth in paragraph 1 of the Final Order.

11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

12. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 16 of the Final Order, that all requirements hereunder have been satisfied.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of Two Thousand Seven Hundred Dollars (\$2,700) plus interest of fifteen dollars and ninety cents (\$15.90) over a period of six (6) months for a total payment of Two Thousand Seven Hundred Fifteen Dollars and Ninety cents (\$2,715.90). The first payment of \$452.65 is due within thirty (30) days of the effective date of this Consent Agreement/Final Order. Respondent shall make monthly payments of \$452.65 due on or before the last day of each month starting in October, 2006 until February 2007, with the total penalty of \$2,700 plus interest to be paid in full no later than March 31, 2007. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency, Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The payment shall identify the Respondent by name and reference the Docket Number (RCRA-07-2006-0239) on the check. Copies of the check shall also be mailed to:

Kristi Denney
Office of Regional Counsel
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

And

Regional Hearing Clerk
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Respondent shall take the following actions within the specified time periods, and according to the terms and conditions, specified in the paragraphs below.

5. Within sixty (60) days of the effective date of this Agreement, Respondent shall determine the facility's generator status based on the amount of hazardous waste generated in a calendar month or accumulated on-site at any one time.

6. Respondent shall immediately manage all hazardous wastes in accordance with 40 C.F.R. § 262.34, based on the facility's generator status.

7. Within seven (7) days of ascertaining the facility's generator status, Respondent shall submit to EPA such documentation showing that the determination has been performed.

8. All notices and submissions required under this Final Order shall be submitted to:

Kevin Snowden
ARTD/RESP
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

9. All references to "days" shall mean calendar days for the purposes of this Order.

C. Parties Bound

10. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

D. Reservation of Rights

11. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of

RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

12. 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 Consent Agreement and Final Order.

13. Except as expressly provided herein, nothing in this Consent Agreement and Final Order 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.

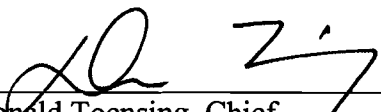
14. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid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

15. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

16. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

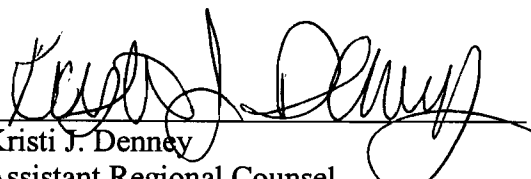
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-11-06
Date



Donald Toensing, Chief
RCRA Enforcement and State Programs Branch
Air, RCRA, and Toxics Division

9/12/06
Date



Kristi J. Denney
Assistant Regional Counsel

RESPONDENT:
D & J PLATING, INC.

9/6/06
Date

Don Adler
Signature

DON ADLER
Printed Name

PRESIDENT
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
~~Robert Patrick~~ Karina Borromeo
Regional Judicial Officer

Date Sept. 14, 2006

IN THE MATTER OF D & J Plating, Respondent
Docket No. RCRA-07-2006-0239

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Kristi Denney
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Don Adler
President
D & J Plating, Inc.
206 S.E. Magazine Road
Ankeny, Iowa 50021-3501

Sept. 14, 2006
Dated

Anna Rock for
Kathy Robinson
Hearing Clerk, Region VII