

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Permatex, Inc.)
3255 Harvester Road)
Kansas City, Kansas 66115)

RCRA I.D. No. KSD007127046)

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-07-2009-0003

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Permatex 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 (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

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 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that EPA has reason to believe that Respondent violated the Kansas Solid Waste Management Act, Kan. Stat. Ann. § 65-3401 et. seq., and the implementing regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter K.A.R. 28-31), and section 3002 of RCRA, 42 U.S.C. § 6922, and the implementing regulations at 40 C.F.R. Part 262.

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region 7.

4. The Respondent is Permatex Inc., a corporation authorized to conduct business under the laws of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When 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. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violation of RCRA alleged in this CAFO.

Factual Background

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

8. Respondent, located at 3255 Harvester Road, Kansas City, Kansas, manufactures and distributes sealants and adhesives for the automotive and consumer markets. Respondent employs approximately 20 full time employees at its Kansas City facility.

9. On or about February 6, 2006, Respondent notified the Kansas Department of Health and Environment (KDHE) that it is a Kansas EPA generator and a federal large quantity generator of D001, D035 characteristic and F003 listed hazardous waste. Kansas EPA generators generate 1,000 kilograms or more of hazardous waste per month or more than 1 kilogram of acutely hazardous waste per month. Federal large quantity generators generate more than 1,000 kilograms of hazardous waste or more than 2 kilogram of acute hazardous waste per month.

10. Respondent has been assigned the following EPA ID Number: KSD007127046.

11. On or about February 8-9, 2007, an EPA representative conducted a compliance evaluation inspection at the Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violation

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

12. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 11 above, as if fully set forth herein.

13. Pursuant to 40 C.F.R. § 262.11 and K.A.R. 28-31(b), a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

14. At the time of the February 2007 inspection, Respondent generated the following three waste streams located in the second floor mixing and transfer area: (1) three 1-gallon containers of paint, (2) one aerosol spray paint can, and (3) one 1-gallon container of paint thinner. Respondent failed to conduct a hazardous waste determination on the three waste streams mentioned above.

15. At the time of the February 2007 inspection, Respondent generated the following twenty waste streams located in the QA/QC room flammable closet: (1) one 1-gallon container of glycol ether, (2) one 1-gallon container of methyl ethyl ketone, (3) one 1-gallon container of

acetone, (4) one 1-gallon container of hexane, (5) one 1-gallon container of kwik dry, (6) one 1-gallon container of naptha solvent, (7) one 1-gallon container of toluene, (8) one 1-gallon container of petroleum distillates, (9) one 1-gallon container of dibutyl phthalate, (10) one 1-gallon container and one 1/2-gallon container of isobutyl acetate, (11) one 1-gallon container of ethyl acetate, (12) one 1-gallon container of xylene, (13) one 1-gallon container of antifreeze, (14) one 1/2-gallon container of ethanol, (15) one 4-liter container of ethyl alcohol, (16) one 4-liter container of methyl alcohol, (17) two 1-gallon containers of isopropyl alcohol, (18) two 1-gallon containers of kerosene, (19) two 1-gallon containers odor mineral spirits, and (20) two 4-liter containers of pentane. Respondent failed to conduct a hazardous waste determination on the twenty waste streams mentioned above.

16. At the time of the February 2007, inspection, Respondent generated the following four waste streams located in the QA/QC room: (1) one 1-liter container and one 2-liter container of sulfuric acid, (2) one 4-liter container of phosphoric acid, (3) four 500-mililiter containers of nitric acid, and (4) one 10-gallon container of solvent. Respondent failed to conduct a hazardous waste determination on the four waste streams mentioned above.

17. The twenty-seven waste streams described in Paragraphs 14-16, above, are solid waste, and amount to approximately thirty-three gallons.

18. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. §262.11 and K.A.R. 28-31-4(b).

III. CONSENT AGREEMENT

19. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

20. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO set forth below.

21. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

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

23. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

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

25. Respondent certifies that by signing this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

26. Based on Respondent's representations in Paragraph 25 above, this CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

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

28. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Seven Thousand Two Hundred Dollars (\$7,200.00) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

29. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 28 above.

30. Respondent agrees that it no longer conducts recycling activities on spent acetone, spent hexatone, and spent isopropyl alcohol at its Kansas City, Kansas facility.

31. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

32. 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.

33. This CAFO 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.

34. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 10 of the Final Order, that all requirements hereunder have been satisfied.

IV. 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 CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a mitigated civil penalty of Seven Thousand Two Hundred Dollars (\$7,200.00).

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

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

The Respondent shall reference the Docket Number, RCRA-07-2009-0003 on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
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 CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

4. This Final Order portion of this CAFO 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 CAFO.

C. Reservation of Rights

5. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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 (\$32,500.00) 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.

6. 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.

7. 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.

8. 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 and the environment.

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

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

D. Compliance Actions

11. Respondent shall take the following actions within the time period specified, according to the terms and conditions specified below:

- a. Within three (3) months of the effective date of this CAFO, Respondent shall submit documentation that shows that Respondent has made all appropriate hazardous waste determinations at its facility.

12. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraph 11(a), above, of the Final Order to the following address:

Marc Matthews, AWMD
Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

13. EPA may approve, disapprove, or require revisions to the report in whole or in part. If EPA requires revisions, Respondent shall submit a revised report within thirty (30) days of the receipt of EPA's notification of the required revisions.

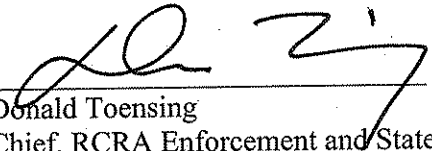
14. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

In the matter of Permatex, Inc.
Docket No. RCRA-07-2009-0003

For the Complainant:
The United States Environmental Protection Agency

8-14-09


Date



Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

8/13/09

Date



Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

*In the matter of Permatex, Inc.
Docket No. RCRA-07-2009-0003*

For Respondent:
Permatex, Inc.

8/11/09
Date

AS Robinson
Signature

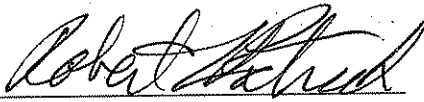
Andrew S. Robinson
Printed Name

General Manager
Title

In the matter of Permatex, Inc.
Docket No. RCRA-07-2009-0003

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

August 24, 2009
Date


Robert Patrick
Regional Judicial Office

IN THE MATTER OF Permatex, Inc., Respondent
Docket No. RCRA-07-2009-0003

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
Attorney for Complainant:

Kelley Catlin
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:

Andrew S. Robinson, General Manager
Permatex, Inc.
3255 Harvester Road
Kansas City, Kansas 66115

Dated: 8/24/09



Kathy Robinson
Hearing Clerk, Region 7