

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: )  
)  
Dawson Brothers, Inc. )  
)  
1845 South Sheridan Street )  
Wichita, Kansas 67123 )  
)  
RCRA I.D. No. KSD981498116 )  
)  
Respondent. )  
)  
Proceeding under Sections 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-07-2009-0008

**COMPLAINT AND  
CONSENT AGREEMENT/FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Dawson Brothers, 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), Title 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

**Section I**

**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) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and Kansas Statutes Annotated (K.S.A.) Section 65-3437 and Kansas Administrative Regulations found at K.A.R. 28-31-4.

## Section II

### 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, who has been duly delegated the authority to bring this action by the Administrator of EPA.

4. The Respondent is Dawson Brothers, Inc. (Dawson), a company incorporated under the laws of Kansas and licensed to do business in the state 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. The State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "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. In the case of a violation of a hazardous waste program pursuant to Sections 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, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

### General Factual Allegations

7. Respondent is a Kansas 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 1845 South Sheridan Street in Wichita, Kansas, is an electroplater of copper, nickel, chrome, zinc, and cadmium. Respondent employs approximately seven people at its facility.

9. As part of its operations, Respondent generates D001, D002, D006, D007, D008, F003, F005, and F019 hazardous wastes.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth in K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference the regulations at 40 C.F.R. Parts 260 and 261. Each of the wastes listed in Paragraph 9 is a "hazardous waste" within the meaning of these regulations.

11. Respondent filed a notification of hazardous waste activity on March 10, 1998, stating that Dawson Brothers, Inc. was a EPA generator within the meaning of KAR 28-31-2(c).

12. On or about May 17, 2007, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility (hereinafter the May 2007 inspection).

13. At the time of the May 2007 Inspection, Respondent was a Kansas Generator within the meaning of KAR 28-31-2(d) because it was generating between 25 and 1,000 kilograms of hazardous waste per month and less than 1 kilogram of acutely hazardous waste.

14. Respondent has been assigned a RCRA facility identification number of KSD981498116.

### **Violations**

15. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as follows:

### **Count 1**

#### **Operation of a Hazardous Waste Treatment, Storage or Disposal Facility Without a Permit**

16. The allegations stated in paragraphs 7 through 15 are realleged and incorporated as if fully set forth herein.

17. Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations at K.S.A. 65-3437 require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

18. The regulations at K.A.R. 28-31-4(h), referencing 40 C.F.R. § 262.34(a), state that Kansas generators may accumulate hazardous waste in containers on-site without a permit or without interim status, provided that certain conditions are met. These conditions include compliance with other hazardous waste regulatory requirements.

19. Respondent failed to comply with various hazardous waste regulatory

requirements, described below.

20. At the time of the May 2007 Inspection, respondent did not have a RCRA permit or RCRA interim status.

21. Respondent does not have a RCRA Permit or Interim Status to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and K.S.A. 65-3437 for operating a treatment, storage, or disposal facility without a RCRA permit or RCRA interim status.

#### **Failure to Comply with Generator Requirements**

22. At the time of the May 2007 Inspection, Respondent was not complying with the following regulatory requirements:

##### *Mark Waste Accumulation Containers with the Date Accumulation Began*

23. The regulations at 40 C.F.R. § 262.34(a)(2) and K.A.R. 28-31-4(h)(3), require that a Kansas generator must clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

24. At the time of the May 2007 Inspection, the Respondent failed to mark the accumulation date of two, 55-gallon containers of D006/D007 hazardous waste that were in hazardous waste storage.

25. Respondent's failure to mark the accumulation date of two, 55-gallon containers of D006/D007 hazardous waste in hazardous waste storage is a violation of the regulations at 40 C.F.R. § 262.34(a)(2) and K.A.R. 28-31-4(h)(3).

##### *Limit Accumulation of Hazardous Waste Stream in Satellite Accumulation Area*

26. K.A.R. 28-31-4(j)(1) & (2) allows Kansas and EPA generators to accumulate as much as 55-gallons of each type of hazardous waste in no more than one container at or near any point of generation, where wastes initially accumulate, without a RCRA permit or RCRA interim status as long as K.A.R. 28-31-4(j)(1) & (2) are complied with.

27. K.A.R. 28-31-4(j)(2) requires the generator, once the generator has accumulated more than the amounts listed in this subsection at any satellite accumulation area, to place the accumulation start date on the full container and move the full container to hazardous waste

storage area within three days.

28. At the time of the May 2007 Inspection, the Respondent had accumulated two partially full containers of D007 hazardous waste chrome paint debris in the paint booth area. Additionally, the combined volume of these two containers exceeded more than 55-gallons of D007 hazardous waste in a satellite accumulation area.

29. Respondent's exceedence of more than 55-gallons of D007 hazardous waste in a satellite accumulation area and Respondent's failure to have no more than one drum for each type of hazardous waste in a satellite accumulation area is a violation K.A.R. 28-31-4(j)(1) & (2).

*Minimize the Possibility of a Hazardous Waste Release*

30. 40 C.F.R. § 265.31 specifically requires all owners and operators of hazardous waste facilities to maintain and operate their facilities to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

31. At the time of a May 2007 Inspection, the inspector observed chromium waste leaching out of the west wall of the building. The inspector observed a six (6) foot portion of the outside wall that was colored green from where the chromium had penetrated the wall.

32. Respondent's failure to minimize the possibility of a release of hazardous waste is a violation of 40 C.F.R. § 265.31 and K.A.R. 28-31-4(h)(5).

*Conduct and Document Weekly Inspections of Hazardous Waste  
Container Storage Area*

33. The regulations at K.A.R. 28-31-4(h)(2)(A) referencing 40 C.F.R. § 265.174, and K.A.R. 28-31-4(k), require Kansas generators of hazardous waste to conduct and document weekly inspections of their hazardous waste storage areas.

34. During the May 2007 Inspection, the Inspector discovered that the Respondent failed to conduct weekly inspections of its hazardous waste storage area from October 2006 through May 2007.

35. Respondent's failure to properly conduct and document weekly inspections of its hazardous waste storage areas is a violation of K.A.R. 28-31-4(k) and K.A.R. 28-31-4(h)(2)(A) referencing 40 C.F.R. § 265.174.

**CONSENT AGREEMENT**

1. Respondent and Complainant agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
2. Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.
4. 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 CA/FO.
5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
6. This CA/FO 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.
7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.
9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$36,407.00 as set forth in Paragraph 1 of the Final Order.
10. 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.
11. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after

January 12, 2009, penalties of up to \$37,500 per day are now authorized.

12. This CA/FO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. By signing this CA/FO, Respondent certifies that, to 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.

14. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 13 of this consent agreement and final order.

15. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 21 of the Consent Agreement, that all requirements hereunder have been satisfied.

#### **Reservation of Rights**

16. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

17. 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 CA/FO.

18. Except as expressly provided herein, nothing in this CA/FO 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.

19. Notwithstanding any other provisions of the CA/FO, 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.

20. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

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

### **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 CA/FO, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of \$36,407.00. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. Wire transfers should be directed 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"



3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

And to:

Jennifer Trotter, CNSL/REGE  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Compliance Actions**

5. Respondent has informed EPA that Terracon will be the contractor performing the required sampling. Respondent shall give EPA seven (7) days written notice if a different contractor is used to perform sampling. This written notice shall include the name, contact information, and qualifications of the contractor. This written notice shall be given to the EPA representative identified below in Paragraph 12. EPA retains the right to disapprove of the selected contractor.

6. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit a sampling plan to EPA for EPA's review and approval. The sampling plan, at a minimum, shall include the following:

a. The sampling plan shall provide that Respondent will notify EPA's representative identified in Paragraph 12 below fourteen (14) days prior to initiating sampling activities.

b. The sampling plan must set forth a plan for sampling the west concrete wall and floor of the building where a green colored, chromium waste was observed leaching out of the wall during the May 2007 Inspection. At a minimum, the plan shall provide for a representative number of samples. The plan shall specify the type of samples (ie, wipe samples, core samples, etc.) that will be taken from the concrete wall and floor, and describe the type(s) of soil samples that will be taken from around the west concrete wall of the building. In addition, if there are any cracks or breaches in the concrete floor that abuts the west concrete wall, soil samples from beneath the breached areas will be obtained for analysis.

c. The sampling plan shall contain a health and safety plan and shall provide that

the samples will be analyzed for chromium using EPA-approved sampling methods. In addition, the plan shall contain a quality assurance plan for analysis of the samples.

d. The sampling plan shall contain a statement of qualifications of any consultant retained to perform the work required by this Final Order.

e. The sampling plan shall contain a schedule for completion of all activities, and shall provide a schedule for submission of a final sampling report at the completion of all sampling activities. This final sampling report shall be submitted for EPA's review and approval and, at a minimum, should include a written description of the type of sampling (wipe sampling, core sampling, soil sampling, etc) done under the approved sampling plan, the location of sampling done under the approved sampling plan and the sampling results of the all samples taken under the approved sampling plan.

7. The sampling plan and sampling report shall be reviewed and approved in accordance with the procedures set forth in Paragraph 13 below.

8. Within thirty (30) days of EPA's approval of the sampling plan, Respondent shall implement the sampling plan in accordance with the schedules contained therein as approved by EPA. Once the sampling plan has been approved by EPA, the plan shall be incorporated into and become an enforceable part of this Final Order.

9. Based on the final sampling report, EPA, in consultation with the Kansas Department of Health and Environment (KDHE), will determine what actions are necessary for Respondent to address any identified contamination.

10. Within thirty (30) days of receipt of notification to Respondent by EPA that certain actions need to be taken to address identified contamination, Respondent shall submit a closure plan to KDHE stating how Respondent will implement actions to address the identified contamination per federal, state, and local regulations. Any such closure plan shall be reviewed, commented on and approved by KDHE, and any work beyond submission of the closure plan shall be supervised and directed by KDHE, in consultation with EPA. The closure plan shall be submitted to:

Kansas Department of Health and Environment  
Bureau of Waste Management  
1000 SW Jackson, Suite 300  
Topeka, Kansas 66612.

A copy of the closure plan shall also be provided to EPA's representative identified in Paragraph 12 below.

11. Within thirty (30) days of completion of the actions required by the closure plan, Respondent shall submit a final report to EPA's representative identified in Paragraph 12 below, and to KDHE at the address identified above in Paragraph 10 above. The final report shall

include documentation that Respondent has implement the actions required by the closure plan and has addressed all identified contamination per federal, state, and local regulations.

### **C. Submittals**

12. All documents required to be submitted to EPA pursuant to this Final Order shall be sent to:

Deborah Finger, AWMD/RESP  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
E-mail: [Finger.Deborah@epa.gov](mailto:Finger.Deborah@epa.gov).

13. All documents, plans or other submittals requiring EPA review and approval shall be reviewed pursuant to the procedures outlined in this Paragraph. EPA's representative will review the document, plan or other submittal and provide comments to Respondent regarding any deficiencies or lack of information in the document. Respondent shall make all necessary corrections to the document based upon EPA's comments within fifteen (15) days of the receipt of EPA's comments. EPA may unilaterally modify the document, plan or other submittal and return it to Respondent. Once a document, plan or other submittal has been approved or modified by EPA, Respondent shall implement the plan or submit any documents required as set forth in the modified submittal. All references to "days" shall mean calendar days for the purposes of this Final Order.

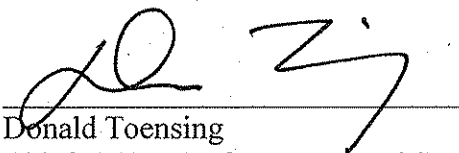
### **D. Parties Bound**

14. This Final Order portion of this CA/FO shall apply to and be binding upon Complainant and 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 CA/FO.

FOR COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-25-09

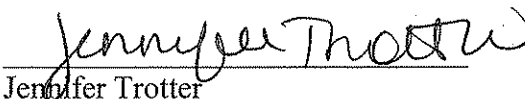
Date



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

9-25-09

Date



Jennifer Trotter  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

FOR RESPONDENT  
DAWSON BROTHERS, INC.

7-23-09  
Date


David G. McCullough  
Signature

David G. McCullough  
Printed Name

Pres.  
Title

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

Sept 28, 2009  
Date

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7

IN THE MATTER OF Dawson Brothers, Inc., Respondent  
Docket No. RCRA-07-2009-0008

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:

Jennifer Trotter  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David L. McCullough, President  
Dawson Brothers, Inc.  
1845 South Sheridan Street  
Wichita, Kanss 67123

Dated: 9/28/09



Kathy Robinson  
Hearing Clerk, Region 7