



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

December 20, 2021

VIA EMAIL

Mr. Michael Zielinski
EFTEC North America, LLC
Quality & EHS Engineer
20219 Northline Road
Taylor, Michigan 48180
michael.zielinski@eftec.com

Re: Consent Agreement and Final Order
EFTEC North America, LLC
Docket No: **RCRA-05-2022-0003**

Dear Mr. Zielinski:

Attached please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on December 20, 2021, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$16,353 in the manner prescribed in paragraph 55 of the CAFO, and reference all checks with the docket number RCRA-05-2022-0003. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions, your staff may contact me at (312) 886-0989 or at gangwisch.bryan@epa.gov.

Sincerely,

BRYAN
GANGWISCH Digitally signed by
BRYAN GANGWISCH
Date: 2021.12.15
10:07:40 -06'00'

Bryan Gangwisch
Land Enforcement and Compliance Assurance Branch

Enclosure

cc: Alexandra Clark, EGLE, clarka37@michigan.gov (w/CAFO)
Lonnie Lee, EGLE, leel@michigan.gov (w/CAFO)
Elizabeth Browne, EGLE, brownec@michigan.gov (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2022-0003
)	
EFTEC North America, LLC)	Proceeding to Commence and Conclude
Taylor, Michigan,)	an Action to Assess a Civil Penalty
)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID No.: MID099651572)	42 U.S.C. § 6928(a)
)	
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is EFTEC North America, LLC, a corporation doing business in the State of Michigan.
5. Where the parties agree to settle one or more causes of action before the filing of a

complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007 and 3013, of RCRA, 42 U.S.C. §§ 6921 – 6927 and 6934.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section

3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$102,638 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by Mich. Admin. Code r. 299.9106(i).

17. Respondent is an "owner" or "operator," as those terms are defined under Mich. Admin. Code r. 299.9106(f) and (g), of a facility located at 20219 Northline Road, Taylor, Michigan 48180 (the Facility).

18. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

19. Respondent's Facility is a "facility," as that term is defined under Mich. Admin. Code r. 299.9103(s).

20. At all times relevant to this CAFO, Respondent used lead, methyl ethyl ketone,

xylene, barium, mineral spirits, paints, aerosols, and other solvents to produce automotive adhesives, coatings, sealings, and other products.

21. At all times relevant to this CAFO, Respondent, while painting, coating, cleaning equipment parts, and manufacturing adhesive, generated various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium, which is collected in 55-gallon drums and other containers and stored at the Facility.

22. At all times relevant to this CAFO, Respondent held various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium for temporary periods in 55-gallon drums and other containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

23. Respondent characterized its hazardous wastes as D001, D005, D008, D018, D035, D039, F003, F005.

24. Respondent stored, transported, disposed of, or otherwise handled various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium in containers as that term is defined under Mich. Admin. Code r. 299.9102(s).

25. At all times relevant to this CAFO, Respondent's various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related

material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium were “solid waste” as that term is defined under Mich. Admin. Code r. 299.9202.

26. At all times relevant to this CAFO, Respondent’s various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium were “hazardous waste” as that term is defined under Mich. Admin. Code r. 299.9203.

27. At all times relevant to this CAFO, Respondent’s holding of various hazardous wastes, including solid lead waste, liquid lead waste, flammable liquid paint waste, waste paint related material, lab waste solid, flammable liquid waste, flammable aerosol waste, wastewater containing liquid barium, and solid barium in containers constituted hazardous waste “storage,” as that term is defined under Mich. Admin. Code r. 299.9107(gg).

28. Respondent is a “generator,” as that term is defined under Mich. Admin. Code r. 299.9104(a).

29. The Facility began generating and managing hazardous waste after November 19, 1980.

30. On October 27, 2020, U.S. EPA sent a Request for Information (RFI) pertaining to the Facility to Respondent.

31. On November 28, 2020, November 30, 2020, and January 8, 2021, Respondent submitted to U.S. EPA written responses to the RFI.

32. On January 4, 2021, U.S. EPA conducted a non-financial record review (NRR) of the Facility’s responses to the RFI.

33. On February 25, 2021, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the NRR.

34. On March 24, 2021, and April 14, 2021, Respondent submitted to U.S. EPA written responses to the Notice of Violation.

35. At all times relevant to this CAFO, the State of Michigan had not issued a license to Respondent to treat, store, or dispose of hazardous waste at its Facility.

36. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

37. On or about January 11, 1985, Respondent submitted a Hazardous Waste Notification, dated January 11, 1985, to U.S. EPA for the Facility.

38. The Hazardous Waste Notification indicated that Respondent is a Large Quantity Generator.

39. At all times relevant to this CAFO, Respondent generated during at least one calendar month more than 1000 kg of hazardous waste at the Facility.

Count I: Storage of Hazardous Waste Without a License or Interim Status

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

41. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the rules at Mich. Admin. Code r. 299.9502(1), the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a license is prohibited.

42. Pursuant to Mich. Admin. Code r. 299.9306(1) and (3), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a license or interim status, provided that the generator complies

with all applicable conditions set forth in Mich. Admin. Code r. 299.9306, including, but not limited to, requirements for owners and operators in Mich. Admin. Code r. 299.9306(1).

43. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Mich. Admin. Code r. 299.9601(1) and (2) and 299.11003(1)(n) – (p) and the license requirements of Mich. Admin. Code r. 299.9502, 299.9508, 299.9510 unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a license or achieve interim status.

44. At all times relevant to this CAFO, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

45. Similarly, the failure to comply with any of the conditions of Mich. Admin. Code r. 299.9306, subjects the generator of hazardous waste to the requirements of Mich. Admin. Code r. 299.9601(1) and (2) and 299.11003(1)(n) – (p) and the permit requirements of Mich. Admin. Code r. 299.9502, 299.9508, 299.9510.

46. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating license or interim status, it must not accumulate hazardous waste on-site for more than 90 days.

47. As documented in Respondent's hazardous waste inspection logs dated March 27, 2019 through June 26, 2019, at least five drums containing D008 waste lead solid were stored on-site for 93 days, 3 days over the allowed 90-day limit, without an approved extension.

48. As documented in Respondent's hazardous waste inspection logs dated January 2, 2020 through June 24, 2020, at least two drums containing flammable liquid hazardous waste were stored on-site for 180 days, 90 days over the allowed 90-day limit, without an approved

extension.

49. As further documented in Respondent's hazardous waste inspection logs dated January 2, 2020 through June 24, 2020, at least one drum containing D008 waste lead solid was stored on-site for 162 days, 72 days over the allowed 90-day limit, without an approved extension.

50. At the time of the NRR, Respondent had accumulated hazardous waste on-site for more than 90 days without obtaining or applying for a license or having an approved extension.

51. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating license or interim status.

52. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by Mich. Admin. Code r. 299.9306, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

53. Respondent's storage of hazardous waste without a license or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of Mich. Admin. Code r. 299.9502, 299.9508, 299.9510.

Civil Penalty

54. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$16,353. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,353 civil penalty for the RCRA violations by ACH electronic funds transfer, payable to

“Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

56. This civil penalty is not deductible for federal tax purposes.

57. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

58. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

59. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grueterich.sophie@epa.gov (for Complainant), and michele.appling@eftec.com (for Respondent).

60. Respondent’s full compliance with this CAFO shall only resolve Respondent’s liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

61. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

62. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

63. Respondent certifies that it is complying fully with the requirements of Mich. Admin. Code r. 299.9306 or Mich. Admin. Code r. 299.9601(1) and (2) and 299.11003(1)(n) – (p) and the license requirements of Mich. Admin. Code r. 299.9502, 299.9508, and 299.9510.

64. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

65. The terms of this CAFO bind Respondent, its successors, and assigns.

66. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

67. Each party agrees to bear its own costs and attorney's fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

EFTEC North America, LLC, Respondent

12/14/2021
Date



Michael Zielinski
Quality & EHS Engineer
EFTEC North America, LLC

United States Environmental Protection Agency, Complainant

Date

MICHAEL HARRIS Digitally signed by
MICHAEL HARRIS
Date: 2021.12.16
11:06:09 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
EFTEC North America, LLC
Docket No. RCRA-05-2022-0003

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN
COYLE**

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ANN COYLE
Date: 2021.12.17
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Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the Matter of: EFTEC North America, LLC

Docket No. RCRA-05-2022-0003

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on December 20, 2021 in the following manner to the addressees:

Copy by Email

Respondent:

Michele Appling
EFTEC North America, LLC
20219 Northline Rd.
Taylor, MI 48180
michele.appling@eftec.com

Copy by E-mail to

Attorney for Complainant:

Sophie Grueterich
Grueterich.sophie@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: _____

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5