

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

In the Matter of:

Tnemec Company, Inc.,

Respondent) **Docket No. RCRA-07-2025-0224**

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Tnemec Company, 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 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).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) 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, 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

3. Respondent is Tnemec Company, Inc., a corporation authorized to operate under the laws of Missouri.

Statutory and Regulatory Framework

4. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential

hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

6. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

9. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

10. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

11. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

12. “Solid waste” is defined at 40 C.F.R § 261.2.

13. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

14. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

15. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

16. The State of Missouri 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 Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. 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(a) of RCRA, 42 U.S.C. § 6928(a).

17. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$124,426 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

18. Respondent is a corporation and authorized to conduct business within the State of Missouri. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. Respondent owns and operates a paint and coating manufacturing facility located at 123 West 23rd Avenue in North Kansas City, Missouri (“facility”).

20. On or about March 8, 1990, Respondent notified the EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, of its regulated waste activity as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. Respondent obtained the following RCRA ID number: MOD007121841.

21. On or about October 29, 2024, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a LQG of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

Violations

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

Count 1

Failure to Conduct Hazardous Waste Determinations

23. Complainant hereby incorporates the allegations contained in Paragraphs 18 through 21 above, as if fully set forth herein.

24. Pursuant to 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

25. At the time of the inspection, it was determined that Respondent was generating the following solid waste streams at the facility:

- a. Yellow/green liquid residue (an estimate of less than one ounce) on the lid of a 55-gallon container of waste paint in Building 1.
- b. One 1-foot-long area of dried blue and green paint splatter on the concrete floor (under a mixing unit) in Building 1.
- c. One 1-foot-long area of dried white paint splatter on the concrete floor (under a mixing unit) in Building 1.
- d. Two half-foot-long areas of dried white paint splatter on the concrete floor (under a mixing unit) in Building 1.
- e. Multicolor paint splatter (a 4-foot by 4-foot-long area, an 8-foot-long area and a 9-foot-long area) on the concrete floor in Building 4.

26. At the time of the inspection, Respondent had not conducted adequate hazardous waste determinations of the solid waste streams described in Paragraph above.

27. Respondent’s failure to perform adequate hazardous waste determinations on the above-referenced solid waste streams is a violation of 40 C.F.R. § 262.11.

Count 2

**Operating as a Treatment, Storage or Disposal Facility
Without a RCRA Permit or RCRA Interim Status**

28. Complainant hereby incorporates the allegations contained in Paragraphs 18 through 21 above, as if fully set forth herein.

29. Section 3005 of RCRA, 42 U.S.C. § 6925, Missouri Revised Statutes 260.390.1(1), and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

30. At the time of the inspection, Respondent did not have a permit or interim status.

Generator Requirements

31. The regulations at 40 C.F.R. § 262.34(a), which are incorporated by reference at 10 C.S.R. 25-5.262(1), state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to close hazardous waste satellite accumulation containers

32. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(a)(1)(i), require that while being accumulated on-site, hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

33. Pursuant to 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(c)(1)(i), referencing 40 C.F.R. § 265.173(a), as found in 40 C.F.R. Part 265, Subpart I, generators must close hazardous waste storage containers during storage.

34. At the time of the inspection, the following hazardous waste satellite accumulation containers were open:

- a. One open and unlabeled $\frac{3}{4}$ full container (an estimate of 250 ml) of waste F041-0052 solvent (D001 hazardous waste) in Building 1.
- b. One open $\frac{3}{4}$ full container (an estimate of 250 ml) of waste N69XG092A paint additive (D001 hazardous waste) in Building 1.
- c. One open and unlabeled $\frac{3}{4}$ full 5-gallon pail of waste T099 solvent (D001/F003/F005 hazardous waste) located at the 2nd Floor Manufacturing Area.
- d. One open and unlabeled $\frac{1}{4}$ full 55-gallon drum of solvent unit cleanout waste (D001/D018/D035/F003/F005 hazardous waste) in Building 1.

- e. One open and unlabeled less than $\frac{1}{4}$ full 20-gallon pail of waste solvent (D001/D018/F003/F005 hazardous waste) in Building 1.
- f. One open and unlabeled $\frac{3}{4}$ full pail (an estimate of three to five gallons) of solvent unit cleanout waste (D001/D018/F003/F005 hazardous waste) located in an empty container area (near the Solvent Distillation Area) in Building 1.
- g. Two open and unlabeled half-full pails (an estimate of three to five gallons each) of solvent unit cleanout waste (D001/D018/F003/F005 hazardous waste) inside the secondary containment of the Solvent Distillation Area/Building 1.

Failure to label hazardous waste satellite accumulation containers

35. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(c)(1)(ii), require generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

36. At the time of the inspection, the following hazardous waste satellite accumulation containers were not marked with the words "Hazardous Waste" or with other words identifying the contents:

- a. One open and unlabeled $\frac{3}{4}$ full container (an estimate of 250 ml) of waste F041-0052 solvent (D001 hazardous waste) in Building 1.
- b. One open and unlabeled $\frac{3}{4}$ full 5-gallon pail of waste T099 solvent (D001/F003/F005 hazardous waste) located at the 2nd Floor Manufacturing Area.
- c. One open and unlabeled $\frac{1}{4}$ full 55-gallon drum of solvent unit cleanout waste (D001/D018/D035/F003/F005 hazardous waste) in Building 1.
- d. One open and unlabeled less than $\frac{1}{4}$ full 20-gallon pail of waste solvent (D001/D018/F003/F005 hazardous waste) in Building 1.
- e. One unlabeled 5-gallon pail of solvent contaminated rags (D001/F003/F005 hazardous waste) in Building 1.
- f. One unlabeled 55-gallon drum of solvent contaminated rags (D001/F003/F005 hazardous waste) located at the Shade Area/Building 1.
- g. One unlabeled 55-gallon drum of waste paint (D001/D035 hazardous waste) located at the Color Lab/Building 1.
- h. One open and unlabeled $\frac{3}{4}$ full pail (an estimate of three to five gallons) of solvent unit cleanout waste (D001/D018/F003/F005 hazardous waste) located in an empty container area (near the Solvent Distillation Area) in Building 1.
- i. Two open and unlabeled half-full pails (an estimate of three to five gallons each) of solvent unit cleanout waste (D001/D018/F003/F005 hazardous waste) inside the secondary containment of the Solvent Distillation Area/Building 1.

Failure to perform annual refresher of hazardous waste training

37. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(a)(4), require, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265 and with 40 C.F.R. § 265.16.

38. Pursuant to 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.16(c), facility personnel must take part in an annual review of the initial RCRA training program.

39. At the time of the inspection, one person whose position related to hazardous waste management had not completed refresher training.

Failure to containerize hazardous waste

40. The regulations at 10 C.S.R. 25-5.262(1), incorporating 40 C.F.R. § 262.34(a)(1)(i), require, in part, that while being accumulated on-site, the generator must place hazardous waste in containers.

41. At the time of the inspection, Respondent failed to containerize hazardous solvent unit cleanout waste (D001/D018/F003/F005 hazardous waste) in the Solvent Distillation Area/Building 1.

42. Because Respondent failed to comply with the generator requirements set forth above, Respondent was not authorized to store hazardous waste at the Facility for any length of time and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

43. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and

- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

44. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

45. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

46. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

47. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

48. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address:
jonmicah.goeller@huschblackwell.com.

Penalty Payment

49. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twenty Thousand Dollars (\$20,000), as set forth below.

50. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be made using any payment method provided at <http://www.epa.gov/financial/makepayment>. For instructions for wire transfers and additional information, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

51. A copy of the confirmation of payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Britt Bieri, Attorney
bieri.britt@epa.gov

52. Respondent understands that failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including

processing and handling costs, and 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. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

53. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

54. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

55. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

56. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

57. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions 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 Seventy-Four Thousand Nine Hundred Forty-Three Dollars (\$74,943) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

58. 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.

59. 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 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.

60. 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.

General Provisions

61. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

62. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

63. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

64. 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.

65. 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.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Britt Bieri
Office of Regional Counsel

RESPONDENT:

Tnemec Company, Inc.

9/18/25
Date

[Signature]
Signature

Kyle Frakes
Printed Name

Director of Technical and
Title Regulatory Affairs



FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

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 via Email to Complainant:

Britt Bieri
Office of Regional Counsel
bieri.britt@epa.gov

Mike Martin
Enforcement and Compliance Assurance Division
martin.mike@epa.gov

Copy via Email to Respondent:

Jon Micah Goeller
Attorney for Respondent
jonmicah.goeller@huschblackwell.com.

Copy via Email to the State of Missouri:

Charlene Fitch, Director
Waste Management Program
Missouri Department of Natural Resources
christopher.nagel@dnr.mo.gov

Michael Parris, Compliance/Enforcement Chief
Waste Management Program
Missouri Department of Natural Resources
michael.parris@dnr.mo.gov

Brandon Backus
Environmental Program Supervisor, Compliance and Enforcement Section
Waste Management Program
Missouri Department of Natural Resources
brandon.backus@dnr.mo.gov

Dated this _____ day of _____, _____.

Signed