

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
DeKalb Metal Finishing Inc.,)
Auburn, Indiana,)
)
Respondent.)
_____)

Docket No.: RCRA-05-09-0018

RECEIVED
SEP 29 2009

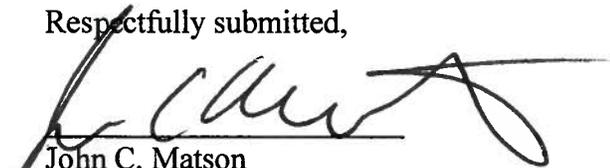
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

NOTICE OF FILING

Complainant, the United States Environmental Protection Agency, Region 5, through its undersigned counsel, hereby gives notice that, in order to correct two typographical errors, it has filed with the Regional Hearing Clerk an Amended Consent Agreement and Final Order for *In re DeKalb Metal Finishing Inc.*, Case Number RCRA-05-2009-0018. On September 14, 2009, EPA filed a Consent Agreement and Final Order (CAFO) setting forth the terms of the settlement agreement between the Parties. EPA subsequently discovered that paragraphs 63 and 63(b) of the CAFO incorrectly stated that the Respondent, DeKalb Metal Finishing, Inc. (Respondent), shall pay the remaining \$80,000 penalty plus interest on or before September 28, 2113, when the Parties had agreed that Respondent would make its final payment of the \$80,000 penalty plus interest on or before September 28, 2013. The Parties have agreed to file this Amended CAFO because it accurately embodies the Parties' agreement to settle this matter.

Respectfully submitted,

Dated: 9-29-09



John C. Matson
Attorney for Complainant
U.S. EPA Region V

**In the Matter of DeKalb Metal Finishing Inc.,
Docket No. RCRA-05-2009-0018**

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2009, a copy of the Amended Consent Agreement and Final Order was filed by hand delivery with:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

I further certify that on that date, I arranged for a copy of same to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed as follows:

Guinn P. Doyle
Attorney at Law
Barnes & Thornburg LLP.
11 South Meridian Street
Indianapolis, IN 46204-3535

I further certify that on that date, I arranged for a copy of same to be sent via pouch delivery to:

Chief Administrative Judge Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington D.C. 20460-2001

9-29-09

nyeremia Ortiz

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED

SEP 20 2009

IN THE MATTER OF:)
)
DeKalb Metal Finishing Inc.,)
Auburn, Indiana,)
)
Respondent.)
)
_____)

Docket No. RCRA-05-2009-0018
PROCEEDING TO COMMENCE AND CONCLUDE
AN ACTION TO ASSESS A CIVIL PENALTY
UNDER SECTION 3008(a) OF THE RESOURCE
CONSERVATION AND RECOVERY ACT,
42 U.S.C. § 6928(a)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

AMENDED 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 of 1976 (“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 Land and Chemicals Division, United States Environmental Protection Agency, Region 5 (“EPA”).
3. Respondent is DeKalb Metal Finishing, Inc. (“DeKalb” or “Respondent”), a corporation doing business in the State of Indiana.
4. EPA has provided notice of commencement of this action to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
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 EPA by Sections 2002(a)(1), 3006(b) and (h), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b) and (h), 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 by 40 C.F.R. § 22.15(c), its right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is fully complying with RCRA, 42 U.S.C. §§ 6901 – 6939e, the Indiana Hazardous Waste Regulations set forth at Article 3.1 of Title 329 of the Indiana Administrative Code (IAC), 329 IAC §§ 3.1 *et seq.*, and the regulations at 40 C.F.R. §§ 260.1 – 279.82, and that it has corrected the violations alleged in Counts 1 and 2 herein.

Statutory and Regulatory Background

12. 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 or used oil, pursuant to Sections 3002, 3003, 3004, and 3006 of RCRA, 42 U.S.C. §§ 6922, 6923, 6924, and 6926.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA (“the Administrator”) 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. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of 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 granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3953 (January 31, 1986). The EPA-authorized Indiana regulations are codified at Article 3.1 of Title 329 of the Indiana Administrative Code, 329 IAC §§ 3.1 *et seq.* See also 40 C.F.R. § 272.750 *et seq.*

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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.

16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to assess a civil penalty of up to \$25,000 per day of violation for each violation of Subtitle C of RCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, requires EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$32,500 for each violation of Subtitle C of RCRA that occurred after March 15, 2004.

EPA's General Allegations

17. Respondent was and is a "person" as defined by 329 IAC § 3.1-4-20, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is an "owner" or "operator," as those terms are defined under 329 IAC § 3.1-4-1 and 40 C.F.R. § 260.10, of a facility located at 625 West 15th Street, Auburn, Indiana ("Facility").

19. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, at which Respondent treated, stored or disposed of hazardous waste.

20. At all times relevant to this CAFO, Respondent's Facility was a "facility," as that term is defined by 329 IAC § 3.1-4-1 and 40 C.F.R. §§ 260.10 and 270.2.

21. At all times relevant to this CAFO, Respondent generated waste from coating metal parts on its coating lines, including Automatic Zinc Line Number 2.

22. At all times relevant to this CAFO, Respondent accumulated the waste referenced in paragraph 21, above, for a temporary period on the grates, berms, and floor of Automated Zinc Line Number 2, before such waste was shipped from the Facility for treatment, storage, disposal, or incineration elsewhere.

24. Representative samples of the waste referenced in paragraphs 21 and 22, above (hereinafter "the Discarded Material Containing Chromium") contained chromium at levels exceeding 5.0mg/l. *See* Exhibit 1. Thus, pursuant to 40 C.F.R. § 261.24(a), the Discarded Material Containing Chromium exhibited the waste characteristic of toxicity, and is assigned the EPA hazardous waste number D007.

25. At all times relevant to this CAFO, the Discarded Material Containing Chromium was a “solid waste” as that term is defined under 329 IAC § 3.1-4-1, 329 IAC § 3.1-6-1, and 40 C.F.R. § 261.2.

26. At all times relevant to this CAFO, the Discarded Material Containing Chromium was a “hazardous waste” as that term is defined under 329 IAC § 3.1-4-1, 329 IAC § 3.1-4-1, and 40 C.F.R. § 261.3.

27. At all times relevant to this CAFO, Respondent’s accumulation of the Discarded Material Containing Chromium on the grates, berms, and floor of Automated Zinc Line Number 2 constituted hazardous waste “storage,” as that term is defined under 329 IAC § 3.1-4-1 and 40 C.F.R. § 260.10.

28. Respondent is a “generator,” as that term is defined under 329 IAC § 3.1-4-1 and 40 C.F.R. § 261.10.

29. Respondent generated and managed hazardous waste at the Facility on or before November 19, 1980.

30. On November 14, 2005, EPA conducted a Compliance Evaluation Inspection of the Facility (“the Inspection”).

31. On March 17, 2006, EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the Inspection.

32. On April 20, 2006, Respondent submitted to EPA a written response to the Notice of Violation.

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

34. 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.

35. On or about July 25, 1980, Respondent submitted a Hazardous Waste Notification to EPA for the Facility.

36. In its Hazardous Waste Notification, Respondent identified itself as a generator.

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

**Count 1: Storage of Hazardous Waste Without a
Hazardous Waste Storage Permit or Interim Status**

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as though set forth in this paragraph.

39. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), EPA promulgated regulations at 40 C.F.R. Part 270, prohibiting the treatment, storage, or disposal of hazardous waste at a facility by any person who has not applied for, or received a permit to treat, store, or dispose of hazardous waste at the facility.

40. 40 C.F.R. § 262.34(a)(1) (as incorporated by reference pursuant to 329 IAC § 3.1-7-1), provides that a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 40 C.F.R. § 262.34(a) (as incorporated by reference pursuant to 329 IAC § 3.1-7-1).

41. One of the conditions required of generators who seek to accumulate hazardous waste on-site for 90 days or less without having a permit or interim status is the requirement that the generator place the waste in or on containers, tanks, drip pads, or containment buildings. 40 C.F.R. § 262.34(a)(1) (as incorporated by reference pursuant to 329 IAC § 3.1-7-1).

42. Failing to comply with any of the conditions of 40 C.F.R. § 262.34 (as incorporated by reference pursuant to 329 IAC § 3.1-7-1), subjects the generator of hazardous waste to the requirements of 40 C.F.R. Section 264 (as incorporated by reference pursuant to IAC Article 3.1, Rule 9 of Title 329), and also subjects the generator to the permit requirements of 329 IAC §§ 3.1-13-1, 3.1-13-2(1), (2), (3), (4), and Sections 3.1-13-3 through 3.1-13-17, including the requirement to obtain a permit or interim status to store hazardous waste at the facility.

43. At the time of the Inspection, Respondent was storing, or holding the Discarded Material Containing Chromium on the grates, berms, and floor of Automated Zinc Line Number 2.

44. The grates, berms and floor of Automated Zinc Line Number 2 are not containers, tanks, drip pads, or containment buildings.

45. Respondent stored the Discarded Material Containing Chromium on the grates, berms and floor of the Automated Zinc Line Number 2 between at least July 31, 2005 and January 1, 2006.

46. As a result of the storage alleged in paragraph 45, above, Respondent failed to satisfy all of the conditions provided for by 40 C.F.R. § 262.34 (as incorporated by reference pursuant to 329 IAC § 3.1-7-1), for maintaining its generator exemption from the requirement to have an operating permit or interim status to store hazardous waste at its Facility.

47. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 40 C.F.R. § 262.34 (as incorporated by reference pursuant to 329 IAC § 3.1-7-1), Respondent became an operator of a hazardous waste treatment, storage, and

disposal facility, and was required to have interim status, or to have applied for, or received a permit to store hazardous waste at its Facility.

48. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 329 IAC §§ 3.1-13-1, 3.1-13-2(1), (2), (3), (4), and Sections 3.1-13-3 through 3.1-13-17.

Count 2: Violation of Used Oil Regulations

49. Complainant incorporates paragraphs 1 through 37 of this Complaint as though set forth fully in this paragraph.

50. Pursuant to 329 IAC § 13-2-19, used oil is: (1) oil that has been refined from crude oil; or (2) synthetic oil that has been used and as a result of being used is contaminated by physical or chemical impurities.

51. Pursuant to 329 IAC § 13-4-1, used oil generators must comply with 329 IAC Title 13, Rule 4, including the used oil storage standards set forth at 329 IAC § 13-4-3.

52. Pursuant to 329 IAC § 13-4-3(b) and 40 C.F.R. § 279.22(a), used oil generators shall not store used oil in units other than: (1) tanks; (2) containers; or (3) units subject to regulation under 40 C.F.R. Sections 264 or 265.

53. Pursuant to 329 IAC § 13-4-3(e)(1) and 40 C.F.R. § 279.22(c)(1), containers and aboveground tanks used to store used oil at generator facilities must be labeled or clearly marked with the words "Used Oil."

55. Pursuant to 329 IAC § 13-4-3(e) and 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment a generator must take steps to: (1) stop the release; (2) contain the released oil; (3) clean up and properly manage the released oil and other materials;

(4) communicate an appropriate spill report; and (5) if necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

56. At the time of the Inspection, Respondent stored used oil in three containers that did not have the words "Used Oil" written on them.

57. At the time of the Inspection, used oil had leaked, spilled or otherwise been released to the floor of the maintenance area.

58. Respondent had detected the release of the oil, but had neither cleaned up nor properly managed the released oil.

59. Respondent's storage of used oil on the floor of the maintenance area violated 329 IAC § 13-4-3(b) and 40 C.F.R. § 279.22(a).

60. Respondent's storage of used oil in three containers that did not have the words "Used Oil" written on them violated 329 IAC § 13-4-3(e)(1) and 40 C.F.R. § 279.22(c)(1).

61. Respondent's failure, despite its detection of the release of used oil to the floor of the maintenance area, to clean up and properly manage the released oil violated 329 IAC § 13-4-3(e) and 40 C.F.R. § 279.22(d).

Civil Penalty

62. In consideration of the facts of this matter, the seriousness of the violation, Respondent's good faith efforts to comply with the applicable requirements pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the penalty criteria of EPA's June 23, 2003 *RCRA Civil Penalty Policy*, Complainant determined that an appropriate civil penalty to settle this action is \$100,000. Complainant agrees that Respondent may pay this amount, with interest, as follows: (1) payment of an initial payment of \$20,000, and (2) 48 installment payments with interest on or before the 28th day of each subsequent month following the initial \$20,000

payment. By agreeing to permit Respondent to pay the penalty in installments, Complainant has determined that an alternative payment mechanism is in the best interests of the United States, and that the size and frequency of the installment payments bears a reasonable relation to the size of the debt, and Respondent's ability to pay.

63. Within 30 days after the effective date of this CAFO, Respondent must pay \$20,000 of the \$100,000 total civil penalty for the RCRA violations in the manner specified in paragraph 66 below. Respondent shall pay the remaining \$80,000 penalty plus interest in 48 installment payments on or before September 28, 2013 as follows:

a. On or before October 28, 2009, Respondent shall pay via electronic funds transfer the first penalty installment payment of \$1,763.33.

b. On or before the 28th day of each subsequent month for forty seven consecutive months, Respondent shall pay via electronic funds transfer a penalty installment payment in the amount of \$1,763.24 for each payment. With interest, the total civil penalty amount Respondent shall pay on or before September 28, 2013 is \$104,635.61.

c. Each penalty installment payment shall be payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

d. In the comment or description field of the electronic funds transfer, Respondent shall state *In re DeKalb Metal Finishing, Inc.*, the docket number of this CAFO, and the billing document number.

e. Respondent must send documentation of its payment by electronic funds transfer for each penalty installment payment to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sheila Burrus (LR-8J)
RCRA Branch
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John C. Matson (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

64. If Respondent fails to timely make any payment required by this CAFO, the entire penalty amount remaining unpaid (including interest) is immediately due. Upon providing written notice to Respondent, EPA may bring an action to collect the remaining unpaid portion of the penalty including the original interest, late-payment interest as set forth in paragraph 65, handling charges, nonpayment penalties and the United States' enforcement expenses incurred in pursuing the collection action. The validity, amount and appropriateness of the original civil penalty are not reviewable in a collection action, and Respondent hereby waives its right to contest the amount of the original civil penalty amount.

65. 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.

66. Respondent shall pay the \$20,000 initial payment within 30 days after the effective date of this CAFO, by sending via regular United States Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall state *In re DeKalb Metal Finishing, Inc.*, the docket number of this CAFO and the billing document number. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sheila Burrus (LR-8J)
RCRA Branch
Land and Chemicals Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John C. Matson (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

68. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

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

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

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

73. 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.

74. Each party agrees to bear its own costs and attorneys fees in this action.

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

76. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

77. The CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

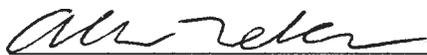
78. This CAFO shall terminate upon payment by Respondent of the civil penalty as required under the civil penalty section of the CAFO.

Agreed to this 18th day of September, 2009



Dennis Fry
President
DeKalb Metal Finishing, Inc.
625 West 15th Street
Auburn, Indiana 46706

Agreed to the 24th day of September, 2009



for _____
Margaret M. Guerriero
Director
Land and Chemicals Division

IN THE MATTER OF:
DeKalb Metal Finishing, Inc.
625 West 15th Street
Auburn, Indiana 46706

Docket No.: RCRA-05-2009-0018

AMENDED FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this AMENDED FINAL ORDER. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Amended Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. 22.18 and 22.31.

Ordered this 24th day of September, 2009

By: Walter W. Handberg
Bharat Mathur
Acting Regional Administrator