

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

Received by  
EPA Region 7  
Hearing Clerk

**In the Matter of:** )  
 )  
Motion Industries, Inc., ) **Docket No. RCRA-07-2023-0032**  
Apache Division, )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Motion Industries, Inc., Apache Division (“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.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Sections 3002, 3005, and 3007 of RCRA, 42 U.S.C §§ 6922, 6925 and 6927, and the standards for identification and listing of hazardous waste (40 C.F.R. Part 261 and 262.11) and the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

**Parties**

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Motion Industries, Inc., Apache Division, a corporation authorized to operate in the state of Iowa.

### **Statutory and Regulatory Framework**

5. 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.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 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 262.

7. 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.

8. 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.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator 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.

10. 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.

11. 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).

12. The regulation at 40 C.F.R. § 260.10 defines “treatment” as any method, technique, or process, including neutralization, designed to change the physical, chemical, or

biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. 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.

14. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

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

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

17. 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.

18. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

19. The regulation at 40 C.F.R. § 260.10 defines “container” to mean any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

20. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the 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.

21. 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 \$109,024 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022, but before January 6, 2023. 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**

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

23. Respondent owns and operates a facility is located at 4805 Bowling Street SW, Cedar Rapids, IA (“facility”). Respondent’s facility primarily manufactures conveyor belts. Respondent employs approximately 150 people at the facility.

24. On or about May 27, 2021, 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, at the time of the inspection, a small quantity generator of hazardous waste, a generator of used oil, and a small quantity handler of universal waste.

25. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3:

- a. Several 5-gallon containers and a 55-gallon container of aerosol cans;
- b. Twelve 5-gallon containers and four 55-gallon containers of toluene and fabrication cement debris;
- c. Two 5-gallon containers and seven 55-gallon containers of Pangofol-contaminated debris;
- d. A 55-gallon container containing toluene; and
- e. Parts washer solvent.

26. At the time of the inspection, the following used oil containers were present:

- a. Miscellaneous oil debris;
- b. Used oil; and
- c. Used oil filters.

27. At the time of the inspection, the following universal waste container(s) were present:

- a. Six 5-gallon containers for universal waste batteries; and
- b. A 4-foot cardboard container of universal waste lamps.

28. Respondent has been assigned the following EPA ID Number: IAR000526566.

## **Violations**

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

### **Count 1**

#### **Failure to Identify Hazardous Waste Numbers**

30. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 28 above, as if fully set forth herein.

31. Pursuant to 40 C.F.R. § 262.11(g), if waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes). Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes).

32. At the time of the inspection, it was determined that Respondent was generating toluene in the central accumulation area.

33. The EPA waste code for toluene is U220.

34. At the time of the inspection, Respondent had identified toluene on its manifest for shipping off-site with the incorrect EPA waste code U002.

35. Respondent's failure correctly identify the EPA hazardous waste code for toluene 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**

36. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 28 above, as if fully set forth herein.

37. Section 3005 of RCRA, 42 U.S.C. § 6925, 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.

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

## **Generator Requirements**

39. The regulation at 40 C.F.R. § 262.16 states that a small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying

with the requirements of parts 124, 264 through 267, and 279, or the notification requirements of sections 3010 of RCRA provided all the conditions for exemption set forth at 40 C.F.R. § 262.16 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

#### *Inspections*

40. The regulation at 40 C.F.R. § 262.16(b)(2)(iv) states that at least weekly, the small quantity generator must inspect central accumulation areas.

41. At the time of the inspection, Respondent conducted inspections of its central accumulation area monthly and not weekly.

42. Respondent's failure to conduct inspections weekly is a violation of 40 C.F.R. § 262.16(b)(2)(iv) and disqualifies it from being exempt from the permit requirement under 40 C.F.R. § 262.16.

#### *Labeling and Marking of Central Accumulation Containers*

43. The regulation at 40 C.F.R. § 262.16(b)(6)(i)(C) states that a small quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

44. At the time of the inspection, three 55-gallon containers containing Pangofol-contaminated debris were not appropriately labeled or marked with the date upon which each period of accumulation began.

45. Respondent's failure to mark these containers with the date upon which each period of accumulation began is a violation of 40 C.F.R. § 262.16(b)(6)(i)(C) and disqualifies it from being exempt from the permit requirement under 40 C.F.R. § 262.16.

#### *Satellite Accumulation*

46. The regulation at 40 C.F.R. § 262.15(a) states that a small quantity generator may accumulate as much as fifty-five (55) gallons of non-acute hazardous waste or either one quart of liquid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or 1 kg (2.2 lbs) of solid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in containers at or near any point of generation where wastes are initially accumulated which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, provided that all of the conditions for exemption in this section are met. The Respondent failed to comply with the following conditions for exemption for satellite accumulation:

*Labeling or Marking of Satellite Accumulation Containers With the Words “Hazardous Waste”*

47. The regulation at 40 C.F.R. § 262.15(a)(5)(i) states that a generator must mark or label its container with the words “Hazardous Waste.”

48. At the time of the inspection, the following containers were not appropriately marked or labeled with the words “Hazardous Waste”:

- a. One 5-gallon container containing Pangofol-contaminated debris; and
- b. Twelve 5-gallon containers containing toluene-contaminated rags and debris.

49. Respondent’s failure to mark or label thirteen containers of hazardous waste with the words “Hazardous Waste” is a violation of 40 C.F.R. § 262.15(a)(5)(i) and disqualifies it from being exempt from the permit requirement under 40 C.F.R. § 262.15.

*Labeling or Marking of Satellite Accumulation Containers With an Indication of the Hazards of the Waste*

50. The regulation at 40 C.F.R. § 262.15(a)(5)(ii) states that a generator must mark or label its container with an indication of the hazards of the contents.

51. At the time of the inspection, the following containers were not appropriately marked or labeled with an indication of the hazards of the contents:

- a. One 5-gallon container containing Pangofol-contaminated debris; and
- b. Two 5-gallon containers containing toluene-contaminated rags and debris.

52. Respondent’s failure to mark or label three containers with an indication of the hazards of the contents is a violation of 40 C.F.R. § 262.15(a)(5)(ii) and disqualifies it from being exempt from the permit requirement under 40 C.F.R. § 262.15.

**Count 3**

**Failure to Obtain an EPA ID Number**

53. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 28 above, as if fully set forth herein.

54. The regulation at 40 C.F.R. § 262.18(a) states that generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

55. At the time of the inspection, Respondent was offering to transport the following waste streams but had not obtained an EPA identification number:

- a. Aerosol cans;
- b. Toluene and fabrication cement debris;
- c. Pangofol-contaminated debris; and
- d. Toluene.

56. Respondent's failure to obtain an EPA identification number before offering to transport hazardous waste is a violation of 40 C.F.R. § 262.18(a).

### **CONSENT AGREEMENT**

57. 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.

58. 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.

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

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

61. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *LaQuita\_Donald@genpt.com*.

### **Penalty Payment**

62. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-two thousand, seven hundred and seventy-nine dollars (\$22,779.00), as set forth below.

63. 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 by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

64. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk  
*R7\_Hearing\_Clerk\_Filings@epa.gov*; and

Katherine Kacsur, Attorney  
*Kacsur.katherine@epa.gov*.

65. Respondent understands that its 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**

66. 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.

67. 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.

68. Respondent certifies by the signing of this Consent Agreement and Final Order that 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.

69. 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.

70. 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 sixty five thousand, six hundred and sixty six dollars (\$65,666.00) 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.

71. 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.

72. 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.

73. Nothing contained in 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**

74. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

75. 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 filing 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.

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

77. 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.

78. 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.

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

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

\_\_\_\_\_  
Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Katherine Kacsur  
Office of Regional Counsel

RESPONDENT:

MOTION INDUSTRIES, INC., APACHE DIVISION

2-17-2023  
Date

  
Signature

LaQuita Donald, CHMM, CDGP  
Printed Name

Director-Safety, Environmental and OSHA Compliance  
Title

**FINAL ORDER**

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), 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.

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Karina Borromeo  
Regional Judicial Officer

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Date

### CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Motion Industries, Inc., Apache Division, EPA Docket No. RCRA-07-2023-0032, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Katherine Kacsur  
*Kacsur.katherine@epa.gov*

Copy via Email to Respondent:

LaQuita Donald  
Director of Safety, Environmental & OSHA Compliance at Genuine Parts Co.  
*LaQuita\_Donald@genpt.com*

Copy via Email to the State of Iowa:

Ed Tormey, Acting Administrator (e-copy)  
Environmental Services Division  
Iowa Department of Natural Resources  
*Ed.tormey@dnr.iowa.gov*

Mike Sullivan, Chief (e-copy)  
Contaminated Sites Section  
Iowa Department of Natural Resources  
*Michael.sullivan@dnr.iowa.gov*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Signed