

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

_____)	
In the Matter of:)	
MacDermid Enthone Inc.)	Docket No. RCRA-01-2021-0086
350 Frontage Road)	
West Haven, Connecticut 06516)	
Proceeding under Section 3008(a))	CONSENT AGREEMENT AND
of the Resource Conservation and)	FINAL ORDER
Recovery Act, 42 U.S.C. § 6928(a))	
_____)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. The U.S. Environmental Protection Agency (“EPA”), Region 1, alleges that MacDermid Enthone Inc. (“MacDermid” or “Respondent”) has violated the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6987, and regulations promulgated pursuant to RCRA. EPA Region I (“Complainant”) and MacDermid (together, the “Parties”) have agreed to settle this matter through this Consent Agreement and Final Order (“CAFO”). EPA’s procedural regulations governing administrative enforcement actions and settlements are set out in the Consolidated Rules of Practice (“Consolidated Rules”) at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this action.

2. EPA Region 1 has brought this RCRA federal enforcement action to obtain civil penalties and compliance. Specifically, Complainant seeks civil penalties pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for Respondent’s alleged violations of

regulations promulgated or authorized pursuant to RCRA. Complainant also seeks compliance pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with RCRA and its implementing regulations.

3. EPA Region 1 has given notice of this RCRA enforcement action to the State of Connecticut pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. The Parties have agreed that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving the matter.

II. BACKGROUND FACTS

5. MacDermid is a Delaware corporation that owns and operates a chemical manufacturing facility in West Haven, Connecticut (“Facility”) that specializes in producing plating materials for the semiconductor industry.

6. From March 2 to March 5, 2020, EPA conducted a RCRA compliance evaluation inspection (“EPA’s RCRA Inspection”) at the Facility.

7. On September 11, 2020, EPA Region 1 issued a notice letter to MacDermid containing a list of potential violations identified at the Facility during EPA’s RCRA Inspection. On April 12, 2021, EPA Region 1 issued a Notice of Potential Violation and Opportunity to Confer letter regarding the Facility’s potential RCRA violations.

III. ALLEGED RCRA VIOLATIONS

A. RCRA Statutory and Legal Framework

8. Pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 271, that set forth standards

and requirements applicable to generators of hazardous waste and to owners and operators of facilities that treat, store or dispose of hazardous waste (“TSDFs”).

9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be equivalent to the federal program.

10. In December 1990, EPA granted the State of Connecticut final authorization to administer its base hazardous waste program. *See* 55 Fed. Reg. 51707 (December 17, 1990). This authorization became effective on December 31, 1990. In September 2004, EPA granted Connecticut final authorization for additional RCRA requirements and regulations. *See* 69 Fed. Reg. 57842 (September 28, 2004).

11. The Connecticut Department of Energy and Environmental Protection administers the Connecticut hazardous waste program through hazardous waste management regulations set out in the Regulations of Connecticut State Agencies (“RCSA”), Title 22a, §§ 22a-449(c)-1 through 22a-449(c)-119. Connecticut’s hazardous waste regulations contain EPA-authorized hazardous waste regulations together with certain non-federally authorized regulations and requirements. Many of Connecticut’s hazardous waste regulations incorporate federal hazardous waste regulations contained in the Code of Federal Regulations as revised as of July 1, 2000. *See* RCSA § 22a-449(c)-100(c)(5).

12. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under RCRA. Thus, a violation of a requirement of an authorized state hazardous waste program is a violation of a requirement of RCRA. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce violations of any requirement

of RCRA and its implementing regulations by issuing administrative orders to assess civil penalties and require compliance.

13. Pursuant to the Civil Penalties Inflation Adjustment Act of 1990 (“CPIAA”), as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and the CPIAA’s implementing regulations set out at 40 C.F.R. Part 19, violations of RCRA-related requirements that occurred from January 13, 2009 through November 2, 2015, are subject to penalties up to \$37,500 per day for each violation, while violations that occur after November 2, 2015, are currently subject to penalties up to \$76,764 per day for each violation. *See* 85 Fed. Reg. 83818, 83821 (Dec. 23, 2020).

B. General Allegations

14. Respondent MacDermid is a corporation and a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and RCSA § 22a-449(c)-100(c)(22). At all times relevant to the allegations set forth in this CAFO, Respondent has been the “owner” and “operator” of the Facility as defined in 40 C.F.R. § 260.10.

15. At all times relevant to the allegations set forth in this CAFO, the Facility has generated “solid wastes” and “hazardous wastes” as those terms are defined in Sections 1004(27) and 1004(5) of RCRA, 42 U.S.C. §§ 6903(27) and 6903(5), 40 C.F.R. §§ 261.2 and 261.3, and RCSA § 22a-449(c)-101(a)(1), which incorporates 40 C.F.R. §§ 261.2 and 261.3 by reference.

16. At all times relevant to the allegations set forth in this CAFO, Respondent has been a “generator” and a “large quantity generator” of hazardous wastes at the Facility as defined

in 40 C.F.R. § 260.10 and RCSA §§ 22a-449(c)-100(b)(1) and (b)(2)(B), which incorporate 40 C.F.R. § 260.10 by reference.

17. In order to temporarily store hazardous waste without obtaining a TSDF permit or complying with the operating requirements of 40 C.F.R. Part 265, Respondent's Facility must comply with the conditions found in the applicable provisions of 40 C.F.R. § 262.34,¹ as incorporated by reference by RCSA § 22a-449(c)-102(a). If Respondent fails to comply with the applicable requirements of 40 C.F.R. § 262.34, Respondent is subject to the requirements of 40 C.F.R. Parts 265 and 268, which are incorporated by reference by RCSA §§ 22a-449(c)-105(a) and 22a-449(c)-108(a), respectively.

C. RCRA Violations

1. Failure to Make Proper Hazardous Waste Determinations

18. RCSA §§ 221-449(c)-102(a)(1) and (a)(2)(A)-(B), which incorporate by reference 40 C.F.R. Part 262, including 40 C.F.R. § 262.11 with certain revisions, require that a generator of solid waste must determine if the waste is a hazardous waste.

19. At the time of EPA's RCRA Inspection, Respondent had not properly made hazardous waste determinations for certain containers of wastes stored in the Facility's Wet PGC Room, including a three-gallon container of hydrobromic acid. In addition, Respondent had not properly made hazardous waste determinations for two drums of solid waste that had been identified as non-hazardous and shipped from the Facility in 2019. Specifically, a drum (#27612) was identified and shipped as containing non-hazardous waste but contained chromium

¹ Forty C.F.R. § 262.34 is cited as it appeared when it was incorporated by reference by RCSA § 22a-449(c)-102(a). EPA has since moved the substantive requirements of 40 C.F.R. § 262.34 to 40 C.F.R. § 262.17. See 81 Fed. Reg. 85732, 85739 (Nov. 28, 2016).

hazardous waste; another drum (#27724) was identified and shipped as containing non-hazardous waste chemical liquid but contained cadmium, chromium, and lead hazardous wastes. Finally, Respondent shipped a drum (#27901) in 2019 that was identified as containing only chromium and corrosive hazardous wastes but also contained lead hazardous waste.

20. Accordingly, Respondent violated RCSA §§ 221-449(c)-102(a)(1) and (a)(2)(A)-(B), which incorporate by reference 40 C.F.R. § 262.11 with certain revisions.

2. Failure to Mark Hazardous Waste Containers and Tank with Accumulation Dates

21. RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. Part 262, including 40 C.F.R. § 262.34(a)(2), requires that for each container that accumulates hazardous waste, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on the container. Forty C.F.R. § 268.50(a)(2) requires that each container and tank that accumulates hazardous waste be clearly marked with the date on which each period of accumulation begins.

22. At the time of EPA's RCRA Inspection, the 500-gallon tank (sump) in the Facility's Old Activator Room was not marked with a date that accumulation began.

23. In addition, there were numerous containers in the Facility's designated hazardous waste storage area ("HWSA") that had not been marked with an accumulation date. Specifically, in the Neutral tier of shelving in the HWSA, there were approximately ten cardboard boxes of off-specification commercial chemical product to be disposed of, including two boxes of 2-2-dichlorodiethyl ether and two boxes of epichlorohydrin, that were not marked with an accumulation date. There was also an open box of lab pack containers that were not marked with an accumulation date. On the floor in front of the Acid Tier in the HWSA, there were five

55-gallon drums containing off-specification acid solutions, and one 55-gallon drum containing acid washes, none of which were marked with accumulation dates.

24. Accordingly, Respondent failed to comply with RCSA § 22a-449(c)-102(a)(1), which incorporates by reference 40 C.F.R. Part 262, including 40 C.F.R. § 262.34(a)(2), and violated 40 C.F.R. § 268.50(a)(2).

3. Failure to Label Hazardous Waste Containers and Tank to Identify Contents

25. RCSA §§ 22a-449(c)-102(a)(1), (a)(2)(J) and (a)(2)(N), which incorporate by reference 40 C.F.R. §§ 262.34(a)(3) and (c)(1)(ii) with certain revisions, require that each hazardous waste container and tank be labeled or marked clearly with the words “Hazardous Waste” and other words that identify the contents of each container or tank, such as “Flammable”, “Acid”, “Alkaline”, “Cyanide”, “Reactive”, “Explosive”, “Halogenated Solvent” or the chemical name. Forty C.F.R. § 268.50(a)(2)(i)-(ii) provides that each container and hazardous waste tank must be clearly marked to identify and describe its contents.

26. At the time of EPA’s RCRA Inspection, there were hazardous waste containers and a hazardous waste tank (sump) at the Facility that were not labeled with the words “Hazardous Waste” and other words identifying their contents. None of the hazardous waste containers in the HWSA described in Paragraph 17 above were properly labeled. In addition, a 16-gallon container for cyanide waste in the Facility’s Makeup Room, several 5-gallon waste containers, and several other small hazardous waste containers in laboratories and other rooms were not properly labeled. The 500-gallon hazardous waste tank (sump) in the Old Activator Room was also not properly labeled.

27. Accordingly, Respondent failed to comply with RCSA §§ 22a-449(c)-102(a)(1), (a)(2)(J) and (a)(2)(N), which incorporate by reference 40 C.F.R. §§ 262.34(a)(3) and (c)(1)(ii) with certain revisions, and violated 40 C.F.R. § 268.50(a)(2)(i)-(ii).

4. Failure to Keep Containers Closed

28. RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. § 262.34(c)(1)(i) with certain revisions, which references 40 C.F.R. § 265.173, requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

29. At the time of EPA's RCRA Inspection, a 55-gallon drum holding hazardous waste acetate in the Mixing/Milling Room, and a 5-gallon bucket and several other hazardous waste containers at the Facility were open or not properly sealed when no wastes were being added or removed from them.

30. Accordingly, Respondent failed to comply with RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate by reference 40 C.F.R. § 262.34(c)(1)(i) with certain revisions, which references 40 C.F.R. § 265.173, and violated 40 C.F.R. § 265.173(a).

5. Failure to Provide Adequate Aisle Space

31. RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(K), which incorporate by reference 40 C.F.R. § 262.34(a)(4) with certain revisions, which references 40 C.F.R. § 265.35, requires that adequate aisle space be maintained to allow the unobstructed movement in an emergency of personnel, fire protection equipment, spill control equipment, and decontamination equipment.

32. At the time of EPA's RCRA inspection, six 55-gallon containers were staged on the HWSA floor directly in front of the HWSA's acid waste storage shelves without sufficient

aisle space to allow for inspection of the containers. Further, these containers prevented adequate aisle aspect and access to the acid waste storage shelves, which contained numerous containers of acid waste stored two tiers high.

33. Accordingly, Respondent failed to comply with RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(K), which incorporate by reference 40 C.F.R. § 262.34(a)(4) with certain revisions, which references 40 C.F.R. § 265.35, and violated 40 C.F.R. § 265.35.

6. Failure to Provide an Impervious Base Free of Cracks and Gaps To Minimize Potential Hazardous Waste Releases

34. RCSA §§ 22a-449(c)-104(a)(1) and (a)(2)(V) of the RCSA, which incorporate by reference 40 C.F.R. § 264.175 with certain revisions, requires that a hazardous waste container storage area must have a containment system with an underlying base that is free from cracks and gaps and is sufficiently impervious to contain leaks and spills. In addition, 40 C.F.R. § 265.31 requires that a facility must minimize the possibility of any unplanned sudden or non-sudden hazardous waste releases into the soil or surface water.

35. At the time of EPA's RCRA Inspection, the HWSA's underlying base had cracks and seams. These cracks and seams increased the possibility that any unplanned hazardous waste releases from the HSWA would enter the soil.

36. Accordingly, Respondent failed to comply with RCSA §§ 22a-449(c)-104(a)(1) and (a)(2)(V) of the RCSA, which incorporate by reference 40 C.F.R. § 264.175 with certain revisions, and violated 40 C.F.R. § 265.31.

IV. GENERAL TERMS

37. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its successors and assigns.

38. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction over the subject matter described in this CAFO, and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the factual allegations contained in Section III.C of this CAFO. Respondent waives any right to a judicial or administrative hearing or appeal regarding this CAFO, and to otherwise contest the allegations of this CAFO or to appeal the CAFO's Final Order.

39. Respondent consents to the assessment of the civil penalty set out in Section VI below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in this CAFO.

40. All notices and submissions required by this CAFO shall be sent to:

For Complainant:

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-3
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

For Respondent:

General Counsel
MacDermid Enthone Inc.
245 Freight Street
Waterbury, Connecticut 06702
vic.michels@elementsolutionsinc.com

V. COMPLIANCE CERTIFICATION AND COMPLIANCE ORDER

41. As of the effective date of this CAFO, Respondent certifies that the Facility is in compliance with Sections 3002 and 3005 of RCRA and the federal and federally authorized state

hazardous waste regulations promulgated thereunder, including but not limited to the hazardous waste regulations cited in Section III above.

42. In order to temporarily store hazardous waste without obtaining a permit or complying with regulatory operating requirements for treatment, storage and disposal of hazardous waste, Respondent's Facility must comply with the conditions found in the applicable provisions of 40 C.F.R. § 262.34, as incorporated by reference by RCSA § 22a-449(c)-102(a). To ensure compliance with these conditions, and to comply with other RCSA and federal regulatory requirements cited in this CAFO, Respondent certifies that it has completed the following RCRA compliance actions at the Facility:

- a. Respondent has established new procedures to ensure that the Facility makes hazardous waste determinations in compliance with RCSA §§ 221-449(c)-102(a)(1) and (a)(2)(A)-(B), which incorporate 40 C.F.R. § 262.11 with certain revisions, for all hazardous wastes generated at the Facility, and for wastes generated after the establishment of these new procedures has identified and shipped all hazardous wastes from the Facility in accordance with these hazardous waste determinations;
- b. Respondent has permanently closed the 500-gallon tank (sump) in the Facility's Old Activator Room;
- c. Respondent has marked all hazardous waste containers at the HWSA with a hazardous waste accumulation date in compliance with RCSA § 22a-449(c)-102(a)(1), which incorporates 40 C.F.R. § 262.34(a)(2), and 40 C.F.R. § 268.50(a)(2);

- d. Respondent has established new procedures to ensure that the Facility properly labels and identifies all hazardous waste containers in compliance with RCSA §§ 22a-449(c)-102(a)(1), (a)(2)(J) and (a)(2)(N), which incorporate 40 C.F.R. §§ 262.34(a)(3) and (c)(1)(ii) with certain revisions, and 40 C.F.R. § 268.50(a)(2)(i)-(ii), and has labeled and identified all hazardous waste containers at the Facility in compliance with these regulations;
- e. Respondent has established new procedures to ensure that hazardous waste containers are closed and properly sealed except when adding or removing waste, in compliance with RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(M), which incorporate 40 C.F.R. § 262.34(c)(1)(i) with certain revisions, and 40 C.F.R. § 265.173, and has closed and properly sealed all hazardous waste containers in compliance with these regulations;
- f. Respondent has provided adequate aisle space in the HWSA in compliance with RCSA §§ 22a-449(c)-102(a)(1) and (a)(2)(K), which incorporate 40 C.F.R. § 262.34(a)(4) with certain revisions, and 40 C.F.R. § 265.35;
- g. Respondent has taken measures to ensure that the underlying base of the HWSA is free of crack and gaps and sufficiently impervious to contain leaks or spills and minimize the possibility that any unplanned hazardous

waste releases would enter the soil, in compliance with RCSA §§ 22a-449(c)-104(a)(1) and (a)(2)(V), which incorporate 40 C.F.R. § 264.175 with certain revisions, and 40 C.F.R. § 265.31.

43. Respondent agrees that it shall maintain compliance with all applicable RCSA hazardous waste regulations and other applicable RCRA regulatory requirements at the Facility.

VI. CIVIL PENALTY

44. Respondent shall pay a civil penalty of \$86,769. EPA Region 1 has determined, consistent with statutory penalty criteria and applicable policies, that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

45. To pay the penalty, Respondent shall submit, no later than 30 days after the effective date of this CAFO, a cashier's or certified check in the amount of \$86,769, payable to the order of the "Treasurer, United States of America," and referencing the case name and docket number ("In the Matter of MacDermid Enthone Inc., Docket No. RCRA-01-2021-0086"). The check shall be sent via regular mail to the following address:

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

If Respondent sends the check via express mail, the following address shall be used:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
phone 314-418-4087

Respondent shall send a notice of the penalty payment and a copy of the check to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-6
Boston, Massachusetts 02109-3912
santiago.wanda@epa.gov

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-3
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

46. If Respondent fails to pay the full amount of the civil penalty by its due date, Respondent shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

47. All payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and 26 C.F.R. § 1.162-21, and Respondent shall not use these payments in any way as, or in furtherance of, a tax deduction under federal law.

VII. EFFECT OF SETTLEMENT

48. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the alleged violations set out in Section III.C of this CAFO.

49. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Respondent for criminal activity, or to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies available to it to enforce the provisions of this CAFO, RCRA and its implementing regulations and permits, and any other federal, state or local law or regulation.

50. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 48 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

51. Each Party shall bear its own costs, disbursements and attorneys' fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

52. The Parties' undersigned representatives certify that they are fully authorized by their respective Party to enter into the terms and conditions of this CAFO and to execute and legally bind their Party to it. Each Party consents to the use of digital signatures on this CAFO,

and Respondent further consents to receipt of service of the CAFO, once filed, by electronic mail.

53. The terms, conditions and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

54. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

FOR RESPONDENT:



Norm Jessiman
Operations Director
Semiconductor Solutions
MacDermid Enthone Inc.

9/24/2021
Date

In the Matter of MacDermid Enthone, Inc., Docket No. RCRA-01-2021-0086
Consent Agreement and Final Order

FOR COMPLAINANT:

James Chow, Deputy Director *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent MacDermid Enthone Inc. is ordered comply with the terms of this CAFO and to pay the civil penalty amount specified in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1

Date