

FILED

September 11, 2023

12:50 P.M. PST

**U.S. EPA REGION 10
HEARING CLERK**

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

| | | |
|-----------------------------|---|------------------------------|
| IN THE MATTER OF: |) | Docket No. RCRA-10-2023-0136 |
| |) | |
| |) | |
| The Home Depot, Inc. |) | |
| |) | |
| Respondent |) | EXPEDITED SETTLEMENT |
| |) | AGREEMENT AND |
| |) | FINAL ORDER |
| The Home Depot, Inc. |) | |
| 1301 Old Steese Highway |) | |
| Fairbanks, Alaska 99701 |) | |
| |) | |
| EPA ID Number: AKR000201087 |) | |
| |) | |
| Facility |) | |
| |) | |

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) is authorized to enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928, and 40 C.F.R. § 22.13(b).
2. The Home Depot, Inc. (“Respondent”) is the owner or operator of The Home Depot Store #1303 facility located at 1301 Old Steese Highway in Fairbanks, Alaska, EPA RCRA ID No. AKR000201087 (“ the Facility”). The Facility is a Small Quantity Generator of Hazardous Waste and a Small Quantity Handler of Universal Waste.
3. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926 to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, the EPA may enforce the federal hazardous waste program in the State of Alaska. The EPA alleges that Respondent violated the following requirements of the RCRA.
 - a. **Operating as a Treatment, Storage, or Disposal Facility without a RCRA Permit or RCRA Interim Status**

Section 3005 of RCRA prohibits the treatment, storage, or disposal of hazardous waste without a permit or interim status, and the regulation at 40 C.F.R. § 270.1(c) requires a RCRA permit for the treatment, storage and disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261. Small Quantity Generators (“SQG”) of hazardous waste in Alaska may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of 40 C.F.R. Parts 124, 264 through 267, and 270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption set forth in 40 C.F.R. §

262.16 for SQGs are met. The Home Depot Store #1303 does not have a RCRA permit or interim status. Therefore, The Home Depot Store #1303 may not store hazardous waste at the Facility without complying with the applicable conditions for exemption from the permit requirement at 40 C.F.R. § 262.16.

Based on its inspection of the Facility, EPA has determined that The Home Depot Store #1303 did not meet the conditions for exemption from the requirements to have a RCRA permit or interim status, as outlined in violations I and II.

I. Failure to Label or Mark Hazardous Waste Container

The regulations at 40 C.F.R. § 262.16(b)(6)(i)(A) and (B) require that a SQG must mark or label its containers with the words “Hazardous Waste” and an indication of the hazards of the contents.

At the time of inspection, in the Central Accumulation Area (CAA), the inspector observed the following containers storing hazardous waste in containers that were not labeled with the words “Hazardous Waste” and an indication of the hazardous of the contents as required by 40 C.F.R. § 262.16(b)(6)(i)(A) and (B):

- A 5-gallon container that was labeled “Hazardous Waste” but was not labeled or marked with a hazard indicator. Following the inspection, the Facility provided photos showing that the container had been marked with the word "Corrosive" for the hazard indicator.
- A 15-gallon container was not labeled with the words hazardous waste and only marked with a partial Flammable/Ignitable hazard indicator. Following the inspection, the Facility provided photos showing that this container was marked with a complete hazard indicator of "Ignitable," but there was no indication that it had been labeled with the words “Hazardous Waste.”
- A 35-gallon container that held eight waste aerosol cans. The container was not labeled or marked with the words “Hazardous Waste” or a hazard indicator. Following the inspection, the Facility provided photos showing that this container had been marked with a hazard indicator, but there was no indication in the photo that the container had been labeled with the words, "Hazardous Waste."

II. Failure to Close a Hazardous Waste Container

The regulation at 40 C.F.R. § 262.16(b)(2)(iii)(A) requires that a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

At the time of inspection, in the CAA, the inspector observed the following containers at the facility that were not closed within the meaning of 40 C.F.R. § 262.16(b)(2)(iii)(A):

- A 2-gallon container of hazardous waste that was labeled with the words "Desechos Peligroso." The lid on the container was not closed. Following the inspection, the Facility provided photos showing that the container had been closed.
- A 2-gallon container of hazardous waste in the flammable storage cabinet that

was not closed. This container was closed by facility personnel during the inspection.

b. Failure to Properly Manage Universal Waste

40 C.F.R. § 273.14(a), states that handlers of universal waste must label or mark universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”

40 C.F.R. § 273.14(e), states that handlers of universal waste must label or mark each lamp or a container or package in which such lamps are contained with one of the following phrases: “Universal waste – lamps,” “Waste Lamps” or “Used Lamps.”

40 C.F.R. § 273.13(d)(1), states that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

At the time of inspection, in the CAA, the inspector observed a black, 5-gallon container that held three to four Lithium and/or Ni-Cad tool batteries. The container was not labeled or marked with any one of the following phrases: “Universal Waste—Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).” According to the information provided to the inspector during the inspection, waste batteries are managed as universal waste at this Facility. Following the inspection, the facility provided photos showing that the container of waste batteries had been labeled with the words, "Hazardous Waste." The photo submitted did not show a hazard indicator on the container. To comply with the universal waste regulations, the batteries should be marked with the words "Universal Waste--Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies)."

At the time of inspection, in the CAA, the inspector observed a cardboard box for the accumulation of 8-foot waste fluorescent lamps on top of the flammable storage cabinet. This container was not closed and not labeled or marked with one of the following phrases: “Universal waste – lamps,” “Waste Lamps” or “Used Lamps.” The inspector also observed one loose, 4-foot waste fluorescent lamp on the shelf above the flammable storage cabinet. The 4-foot waste lamp was not contained or packaged and was not labeled as a universal waste lamp. Facility personnel placed the 4-foot waste fluorescent lamp in the 8-foot waste fluorescent lamp container during the inspection. Following the inspection, the facility provided photos showing that this 8-foot container of universal waste lamps had been closed.

4. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,750. The attached Penalty Calculation Worksheet is incorporated by reference.
5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein, (3) neither admits nor denies the factual allegations

contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b); and (7) consents to electronic service of the filed ESA.

6. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$3,750 for the RCRA violations identified in this Agreement. Payments under this Agreement may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Respondent must note on the check the title and docket number of this action.

7. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and Final Order and to execute and legally bind Respondent to it.
9. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
10. Each party shall bear its own costs and fees, if any.
11. This Agreement and Final Order shall constitute full settlement of the civil claims alleged herein.
12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

This Agreement is binding on the parties signing below and, in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order with the Regional Hearing Clerk for the EPA, Region 10.

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: The Home Depot, Inc., Docket No.: RCRA-10-2023-0136 was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

Mr. Rod Person
Store Manager
The Home Depot Store #1303
rod_t_person@homedepot.com

DATED this _____ day of _____, 2023.

Regional Hearing Clerk
EPA Region 10