

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5TH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

Royal Tractor Company, Inc. )  
109 Overland Park Place )  
New Century, Kansas 66031 )

RCRA I.D. No. KSR000503466 )

**Respondent.** )

Proceeding under Section 3008(a) and (g) of )  
The Resource Conservation and Recovery Act, )  
as amended, 42 U.S.C. § 6928(a) and (g) )

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. RCRA-07-2007-0002

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Royal Tractor 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**II. ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's 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 (Part 22).

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

### **Parties**

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch of EPA, Region VII, pursuant to the following delegations: EPA Delegation No. 8-9-A, dated May 11, 1994; EPA Delegation No. R7-8-9-A, dated June 14, 2005; and EPA Delegation No. R7-Div-8-9-A, dated June 15, 2005.

4. The Respondent is Royal Tractor Company, Inc. (Respondent), a company incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas.

### **Statutory and Regulatory Framework**

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "KAR 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the 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 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004.

### **Factual Background**

7. Respondent is a Kansas corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 109 Overland Park Place, New Century, Kansas, manufactures and sells lift trucks and hauling equipment.

9. On or about October 7, 2004, Respondent notified KDHE that it was a Kansas Generator of hazardous waste in the state of Kansas.
10. Respondent has been assigned a facility identification number of KSR000503466.
11. On January 12, 2005, EPA conducted a RCRA compliance evaluation inspection at the Respondent's facility.

### **Violation**

#### **FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

12. Complainant hereby incorporates the allegations contained in paragraphs 7 through 11 above, as if fully set forth herein.
13. Pursuant to KAR 28-31-4(b) any person who generates hazardous waste shall determine if that waste is a hazardous waste.
14. At the time of the January 12, 2005 inspection, Respondent was generating toluene-contaminated rags. These rags were disposed of in the general trash, which is then dumped into a 40 cubic yard container located outside the facility. The trash is sent to the Johnson County landfill.
15. At the time of the January 12, 2005 inspection, Respondent had not conducted a hazardous waste determination on this waste.
16. Respondent's failure to make a hazardous waste determination is a violation of KAR 28-31-4(b).

### **CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order. The terms of the Consent Agreement and Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and waives its right to appeal the Final Order set forth below.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. Respondent certifies by the signing of this Consent Agreement and Final Order that its facility at 109 Overland Park Place, New Century, Kansas, is in compliance with Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6939e, and the regulations promulgated thereunder.
7. The effect of settlement described below in paragraph 10 of this Consent Agreement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 6 of this Consent Agreement.
8. 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.
9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of \$6,286 as set forth in paragraph 1 of the Final Order.
11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.
12. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

### **FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of Six Thousand Two Hundred Eighty-six Dollars (\$6,286).

901 North 5th Street  
Kansas City, Kansas 66101; and

Regional Hearing Clerk  
U.S. EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Parties Bound**

4. This Final Order portion of 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.

#### **C. Reservation of Rights**

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion 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 thirty-two thousand five hundred dollars (\$32,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

7. 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.

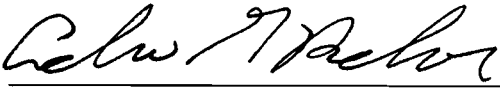
8. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

9. 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


12/28/06

Date

  
for Donald Toensing, Chief  
RCRA Enforcement and State Programs Branch  
Air, RCRA, and Toxics Division

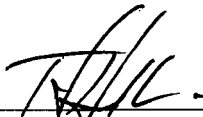
12/28/06

Date

  
Sarah Chibos LaBoda  
Assistant Regional Counsel

RESPONDENT:  
ROYAL TRACTOR COMPANY, INC.

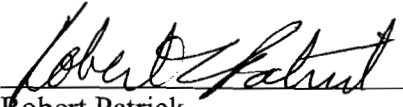
12/22/06  
Date

  
Signature

T.J. HARDWICK  
Printed Name

President  
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

  
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Robert Patrick  
Regional Judicial Officer

Date December 28, 2006



IN THE MATTER OF Royal Tractor Company, Inc., Respondent  
Docket No. RCRA-07-2007-0002

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 hand delivered to  
Attorney for Complainant:

Sarah Thibos LaBoda  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

T.J. Hardwick  
President  
Royal Tractor Company, Inc.  
109 Overland Park Place  
New Century, Kansas 66031

Dated: 12/28/06

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7