

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

Received by
EPA Region 7
Hearing Clerk

In the Matter of:

Oregon Tool, Inc.,

Respondent

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) **Docket No. RCRA-07-2023-0120**
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CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Oregon Tool, 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 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 Missouri Revised Statutes 260.370, Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and Missouri regulations (which incorporate the following federal regulations by reference): the standards for identification and listing of hazardous waste (40 C.F.R. Part 261 and 262.11), the standards applicable to generators of hazardous waste (40 C.F.R. § 262), the standards for the management of used oil (40 C.F.R. Part 279), and the standards for universal waste management (40 C.F.R. Part 273).

Parties

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

4. Respondent is Oregon Tool, Inc., a corporation authorized to operate under the laws of Delaware.

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 3001, 3002, and 3005 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, and 6925, 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 through Part 279.

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 of EPA 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 “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.

13. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

14. 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.

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 State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in the Missouri Code of State Regulations (C.S.R.) in Title 10, Division 25. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When 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(a) of RCRA, 42 U.S.C. § 6928(a).

18. 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 \$117,468 for violations that occur after November 2, 2015, and for which penalties are assessed on or after 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

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

20. Respondent owns and operates a facility located at 4840 East 12th Street, Kansas City, Missouri (“facility”). Respondent manufactures steel lawn mower blades and employs approximately 130 people at this facility.

21. On or about February 4, 2019, Respondent notified EPA of its regulated waste activity as a Large Quantity Generator (LQG) and obtained a RCRA ID number. Respondent’s assigned RCRA ID Number is: MOD055445860.

22. On or about September 28 and 29, 2022, an EPA inspector and Missouri Department of Natural Resources inspector 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 operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a generator of universal waste, and used oil generator.

23. At the time of the inspection, spent sodium nitrite, sodium nitrate, and potassium nitrate mixture, among others, were present. These wastes were determined to be a D001 oxidizer hazardous waste, characteristic for ignitability as defined at 40 C.F.R. § 261.2 and 261.3.

24. The inspector observed the spent sodium nitrite, sodium nitrate and potassium nitrate mixture on the floor, walls, coated on heat treat line equipment, the ceiling, vents, and on the roof outside the vents.

25. Between December 2022 and April 2023, Respondent removed and disposed of all the spent sodium nitrite, sodium nitrate and potassium nitrate mixture from the floor, walls, heat treat line equipment, ceiling, vents and the roof outside the vents of the heat treat building as hazardous waste.

26. At the time of the inspection, two 4-quart bins containing used oil were present in the Tool and Die Shop.

27. At the time of the inspection, the following universal waste containers were present:

- a. One cardboard box containing D-size batteries and AA-size spent nickel cadmium batteries in the Used Oil Storage Room.
- b. One cardboard box containing 24, 8-foot spent fluorescent lamps in the Used Oil Storage Room.

Violations

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

Count 1

Failure to Conduct Hazardous Waste Determination

29. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 27 above, as if fully set forth herein.

30. Pursuant to 10 C.S.R. 25-4.261(1) and 10 C.S.R. 25-5.262(1), which incorporate by reference the regulations at 40 C.F.R. §§ 261.2 and 261.3 and 262.11, a generator of solid waste must determine if that waste is a hazardous waste using methods prescribed in the regulations.

31. At the time of the inspection, it was determined that Respondent was generating spent sodium nitrite, sodium nitrate, and potassium nitrate mixture. The waste stream was accumulating on the floor, walls, ceiling, and equipment in the Heat Treat Building.

32. At the time of the inspection, Respondent had not conducted a hazardous waste determination on the spent sodium nitrite, sodium nitrate, and potassium nitrate mixture.

33. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste stream is a violation of 10 C.S.R. 25-5.262, which incorporates 40 C.F.R. § 262.11 by reference.

Count 2

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

34. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 27 above, as if fully set forth herein.

35. Missouri Revised Statutes 260.390.1(1), Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 10 C.S.R. 25-7.270, which incorporate 40 C.F.R. Part 270 by reference, 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.

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

Generator Requirements

37. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a) by reference, states that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) 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:

Failure to conduct weekly hazardous waste inspections

38. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a)(1)(i) by reference, requires that while being accumulated on-site, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 264.

39. Pursuant to 10 C.S.R. 25-7.264(1), which incorporates 40 C.F.R. § 264.174 by reference (as found in 40 C.F.R. Part 264, Subpart I), the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

40. At the time of the inspection, Respondent's representative provided information that fifty-one (51) inspections were not performed in 2020, forty-six (46) inspections were not performed in 2021, and eight (8) inspections were not conducted in 2022.

Failure to date hazardous waste accumulation containers

41. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a)(2) by reference, requires generators to clearly mark the date upon which each period of accumulation began on each container.

42. At the time of the inspection, in the Heat Treat Building, the inspector observed two full 55-gallon hazardous waste accumulation containers of D001 oxidizer hazardous waste that were not marked with the accumulation start date.

Failure to properly maintain and operate a facility

43. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires that the generator complies with the requirements for owners or operators in subparts C and D in 40 C.F.R. § 265.

44. Pursuant to 10 C.S.R. 25-7.265(1), which incorporates 40 C.F.R. § 265.31 by reference (as found in 40 C.F.R. Part 265, Subpart C), facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

45. At the time of the inspection, in the Heat Treat Building, the inspector observed spent hazardous waste sodium nitrite, sodium nitrate, and potassium nitrate mixture accumulating throughout the Heat Treat Building. This hazardous waste was not containerized and accumulating on the heat treat line equipment, walls, floor, ceiling, exhaust fan housings, and exterior roof.

46. The spent sodium nitrite, sodium nitrate, and potassium nitrate mixture is a D001 oxidizer hazardous waste.

47. Pursuant to 10 C.S.R. 25-4.261, which incorporates 40 C.F.R. § 261.21(a)(4) by reference, D001 is a characteristic ignitable hazardous waste that is an “oxidizer.” An oxidizer is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

Failure to adequately test and maintain equipment

48. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires that the generator complies with the requirements for owners or operators in subparts C and D in 40 C.F.R. § 265.

49. Pursuant to 10 C.S.R. 25-7.265(1), which incorporates 40 C.F.R. § 265.33 by reference (as found in 40 C.F.R. Part 265, Subpart C), all facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

50. At the time of the inspection, the fire extinguisher, located outside of the door to the Used Oil Storage Area, had last been inspected in April of 2020 by Johnson Controls Fire Protection LP.

51. At the time of the inspection, the fire extinguisher, located outside of the door to the Hot Forming Area, had last been inspected in April of 2020 by Johnson Controls Fire Protection LP.

Failure to list emergency coordinator information in contingency plan

52. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires that the generator complies with the requirements for owners or operators in subparts C and D in 40 C.F.R. § 265.

53. Pursuant to 10 C.S.R. 25-7.265(1), which incorporates 40 C.F.R. § 265.52(d) by reference (as found in 40 C.F.R. Part 265, Subpart D), the owner or operator must list names, addresses, and phone numbers (office and home) of all persons qualified to act as an emergency coordinator, and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates.

54. At the time of the inspection, the primary Emergency Coordinator listed in the Contingency Plan was no longer employed at the facility and the secondary Emergency Coordinator listed was replaced in 2021.

Satellite Accumulation

55. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(c)(1) by reference, allows a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as “satellite accumulation.” At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

Failure to close a satellite accumulation container

56. The regulation at 10 C.S.R. 25-5.262(1), which incorporates 40 C.F.R. § 262.34(c)(1)(i) by reference, provides that satellite accumulation containers must comply with 40 C.F.R. § 265.173(a).

57. Pursuant to 10 C.S.R. 25-7.265(1), which incorporates 40 C.F.R. § 265.173(a) by reference, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

58. At the time of the inspection, in the Heat Treat Building, the inspector observed one 55-gallon hazardous waste satellite accumulation container of D001 oxidizer hazardous waste that was not closed.

Failure to label a satellite accumulation container

59. The regulation at 10 C.S.R. 25-5.262(2)(C)1, which incorporates 40 C.F.R. § 262.34(c)(1)(ii) by reference, provides that satellite accumulation containers must be marked with the words, “Hazardous Waste,” or with other words that identify the contents of the container.

60. At the time of the inspection, in the Heat Treat Building, the inspector observed one 55-gallon hazardous waste satellite accumulation container of D001 oxidizer hazardous waste that was not marked with the words, “Hazardous Waste,” or other words to identify the contents of the container.

61. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 34 through 60 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 3
Failure to Comply with Universal Waste Management Requirements

62. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 27 above, as if fully set forth herein.

Failure to label a universal waste lamp container

63. The regulation at 10 C.S.R. 25-16.273(1), which incorporates 40 C.F.R. § 273.14(e) by reference, requires small quantity handlers of universal waste to clearly label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

64. At the time of the inspection, in the Used Oil Storage Room, the inspector observed one unlabeled cardboard box storing 24 eight-foot universal waste-lamps.

65. Respondent’s failure to properly label the universal waste lamp container described above is a violation of 10 C.S.R. 25-16.273(1), which incorporates 40 C.F.R. § 273.14(e) by reference.

Failure to label a universal waste battery container

66. The regulation at 10 C.S.R. 25-16.273(1), which incorporates 40 C.F.R. § 273.14(a) by reference, requires small quantity handlers of universal waste to clearly label or mark each universal waste battery or container in which the batteries are contained with one of the following phrases: “Universal Waste-Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies).”

67. At the time of the inspection, in the Used Oil Storage Room, the inspector observed one unlabeled cardboard box storing 14 universal waste-batteries.

68. Respondent’s failure to properly label the universal waste battery container described above is a violation of 10 C.S.R. 25-16.273(1), which incorporates 40 C.F.R. § 273.14(a) by reference.

Count 4
Failure to Comply with Used Oil Regulations

69. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 27 above, as if fully set forth herein.

Failure to label used oil containers

70. The regulation at 10 C.S.R. 25-11.279(1), which incorporates 40 C.F.R. § 279.22(c)(1) by reference, requires used oil generators to label or clearly mark containers used to store used oil at generator facilities with the words “Used Oil.”

71. At the time of the inspection, in the Tool and Die Shop, the inspector observed two unlabeled 4-quart containers of used oil.

72. Respondent’s failure to label the containers of used oil described above is a violation of 10 C.S.R. 25-11.279(1), which incorporates 40 C.F.R. § 279.22(c)(1) by reference.

CONSENT AGREEMENT

73. 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.

74. 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 and performance of the compliance actions described below.

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

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

77. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *olga.groat@oregontool.com*.

Penalty Payment

78. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of three hundred thirty-seven thousand and two hundred fifty-three dollars (\$337,253) as set forth below.

79. 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 979078
St. Louis, Missouri 63197-9000

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

80. 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

Kelley Catlin, Attorney
catlin.kelley@epa.gov.

81. 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).

Compliance Actions

82. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

83. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the following:

- a. The Salt Deposit Maintenance Plan for EPA review and approval.
- b. The final report of the Salt Removal Project, including a narrative description of all clean-up activities performed, a description of the amount of hazardous waste and non-hazardous waste generated, and copies of all hazardous waste manifests and land disposal records generated during the project.

84. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the first of four Quarterly Salt Deposit Reports to EPA. The subsequent three (3) submissions shall be submitted within ninety (90) days of the previous submission. Each Quarterly Salt Deposit Report shall include the following:

- a. A narrative description of how Respondent is implementing the Salt Deposit Maintenance Plan.
- b. Photographs of buildup of salt deposits throughout the Heat Treat Building (including but not limited to the three heat treat lines, floor, walls, ceiling, vents).
- c. Photographs of buildup of salt deposits on the roof of the Heat Treat Building.
- d. Copies of each manifest prepared for salt deposit hazardous waste shipped off site for the reporting period.

85. EPA will review the Quarterly Salt Deposit Report to determine whether Respondent is required to remobilize and implement the procedures set forth in the Salt Deposit Removal Work Plan and Safety Plan (dated December 19, 2022). At a minimum, Respondent will implement the procedures set forth in the Salt Deposit Removal Work Plan and Safety Plan (dated December 19, 2022) during the planned summer and winter shutdowns.

86. Respondent shall electronically submit all documentation generated to comply with the requirements set forth in the immediately preceding paragraphs to the following address:

Mike Martin, RCRA Section
Chemical Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
martin.mike@epa.gov

Effect of Settlement and Reservation of Rights

87. 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.

88. 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 89 directly below.

89. 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.

90. 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.

91. 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 Seventy Thousand Seven Hundred Fifty-Two Dollars (\$70,752) 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.

92. 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.

93. 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.

94. 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.

95. Nothing in this Consent Agreement and Final Order shall be construed as an admission by Respondent as to any liability, fact, finding, issue of law, or alleged violation of law. Respondent's compliance with this Consent Agreement and Final Order shall not constitute or be construed as an admission by Respondent of any liability, fact, finding, conclusion, issue of law, or alleged violation of law.

General Provisions

96. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

97. 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 the filing of the Final Order 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.

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

99. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of compliance action items set forth in Paragraphs 82 – 86 is restitution, remediation, or required to come into compliance with the law.

100. 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.

101. 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.

102. 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

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Kelley Catlin
Office of Regional Counsel

Date

RESPONDENT:

OREGON TOOL, INC.



Signature

7/11/2023

Date

Terry Hames

Printed Name

CFO

Title

FINAL ORDER

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

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(For EPA use only.)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Oregon Tool, Inc., EPA Docket No. RCRA-07-2023-0120, was sent this day in the following manner to the addressees:

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Dated this _____ day of _____, 2023.

Signed