

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:)

Continental Manufacturing Chemist, Inc.)
912 South State Street)
Madrid, Iowa 50156)

CONSENT AGREEMENT AND
FINAL ORDER

EPA ID No. IAR 000505404)

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).)

Docket No. RCRA-07-2008-0015

I. PRELIMINARY STATEMENT

This administrative action is being conducted pursuant to Section 3008(a) and (g) 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 ("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 ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air and Waste Management Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Continental Manufacturing Chemist, Inc., incorporated under the laws of and authorized to conduct business in the State of Iowa.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Consent Agreement and Final Order is a complete

and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

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 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. 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), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 40 C.F.R. Parts 261, 262 and 265.
3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Respondent is an Iowa corporation authorized to operate in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

Factual Background

5. Respondent operates a facility known as Continental Laboratories in Madrid, Iowa. This facility blends, packages, labels and ships products under contract to other companies. These products include liquid personal care products, animal health products and institutional cleaning products.

6. Respondent has been in operation at this location since 1947, and currently employs approximately 22 employees.
7. On or about October 21, 2005, Respondent was issued an EPA facility identification number as a Conditionally Exempt Small Quantity Generator (less than 100 kilograms per month) of hazardous waste.
8. Respondent's assigned facility identification number is IAR000505404.
9. On February 21, 2007, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. During the inspection, Respondent's representatives stated that they did not generate any hazardous waste on-site.
10. Based on information obtained subsequent to the inspection, Respondent was issued a Notice of Preliminary Findings for failing to comply with a number of requirements of RCRA.

Violations

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 above, as if fully set forth herein.

COUNT I

OPERATING AS A HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR INTERIM STATUS

12. Pursuant to 40 C.F.R. § 261.5(b), a conditionally exempt small quantity generator's hazardous waste is excluded from full regulation under 40 C.F.R. Parts 262 through 266, if the generator complies with the regulations of 40 C.F.R. § 261.5(g).
13. Pursuant to 40 C.F.R. § 261.5(g), in order to be excluded from full regulation, the generator must accumulate no more than a total of 1000 kilograms of hazardous waste on-site at any time. If the generator accumulates more than 1000 kilograms of hazardous waste at any time, all of those accumulated wastes are subject to the special provisions of part 262 applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month.
14. At the time of the February 2007 EPA inspection, Respondent had accumulated more than 1000 kilograms of hazardous waste on-site.

15. Therefore, Respondent became subject to regulation under the special provisions of part 262 applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month.

A. Illegal Storage of Hazardous Waste

16. The regulations at 40 C.F.R. § 262.34(d) state that a generator who generates between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, provided that the generator complies with the requirements set forth in 40 C.F.R. §§ 262.34(d)(1) through (5).

17. The regulations at 40 C.F.R. § 262.34(e) allow for a generator who generates between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month to accumulate the hazardous waste for 270 days or less without a permit or without having interim status, if the generator must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more, provided that he or she complies with the requirements of 40 C.F.R. §§ 262.34(d)(1) through (5).

18. Respondent's facility is located more than 200 miles away from the hazardous waste disposal facility to which it transports its hazardous waste.

19. At the time of the February 2007 EPA inspection, Respondent had been storing at least 27 drums of hazardous waste on-site for more than 270 days.

20. By storing hazardous waste on-site for greater than 270 days, Respondent was operating as a hazardous waste storage facility and was therefore required to have a permit or interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

21. Respondent does not have a RCRA permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

B. Failure to Meet Generator Requirements

22. The regulations at 40 C.F.R. § 262.34(d) state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements set forth in 40 C.F.R. §§ 262.34(d)(1) through (5).

Labeling and Dating of Hazardous Waste Containers

23. The regulations at 40 C.F.R. § 262.34(d)(4) state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 C.F.R. §§ 262.34(a)(2) and (a)(3).

24. The regulations at 40 C.F.R. § 262.34(a)(3) require that while being accumulated on-site, each hazardous waste container is labeled or marked clearly with the words, "Hazardous Waste."

25. At the time of the February 2007 EPA inspection, Respondent had accumulated at least 27 containers of hazardous waste in Building #2 that were not labeled or marked clearly with the words, "Hazardous Waste."

26. The regulations at 40 C.F.R. § 262.34(a)(2) require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection.

27. At the time of the February 2007 EPA inspection, Respondent had accumulated at least 27 containers of hazardous waste in Building #2 that were not dated with the accumulation start date.

Emergency Equipment

28. The regulations at 40 C.F.R. § 262.34(d)(4) state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of subpart C of 40 C.F.R. part 265.

29. The regulations at 40 C.F.R. § 265.32, as found in 40 C.F.R. Part 265 subpart C, state that all facilities must be equipped with an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel; and a device, such as a telephone or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

30. At the time of the February 2007 EPA inspection, Respondent had failed to provide the equipment required in 40 C.F.R. § 265.32 at its facility.

Designation of Emergency Coordinator

31. The regulations at 40 C.F.R. § 262.34(d)(5)(i) state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator has, at all times, at least one employee (known as the “emergency coordinator”) either on the premises or on call with the responsibility for coordinating all emergency response measures specified in 40 C.F.R. § 262.34(d)(5)(iv).

32. At the time of the February 2007 EPA inspection, Respondent had not designated an emergency coordinator for its facility.

Emergency Information

33. The regulations at 40 C.F.R. § 262.34(d)(5)(ii) state that a generator who accumulates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator posts the following information next to the telephone: name and telephone number of the emergency coordinator; location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department.

34. At the time of the February 2007 EPA inspection, Respondent had not posted any of the information required by 40 C.F.R. § 262.34(d)(5)(ii) by the telephone.

35. Respondent’s failure to comply with the conditions set forth in 40 C.F.R. §§ 262.34(d)(1) through (5), which is alleged in paragraphs 23 through 34, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

36. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA.

III. CONSENT AGREEMENT

37. 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. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

38. 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 set forth below.

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39. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

40. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order and agrees not to appeal the Final Order set forth below.

41. Respondent and Complainant agree to resolve the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

42. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

43. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge and after thorough investigation, it is presently in compliance with all requirements of Subchapter III of RCRA (Hazardous Waste Management). 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.

44. The parties agree that Respondent shall pay a penalty of zero dollars (\$0) because it has certified to EPA, under penalty of perjury, that it has an inability to pay any penalty for the violations cited above.

45. The effect of settlement described in paragraph 42 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in paragraphs 43 and 44 above.

46. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance.

47. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

48. This Consent Agreement and Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 58 of the Final Order, that all requirements hereunder have been satisfied.

49. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

IV. FINAL ORDER

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

A. Compliance Actions

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

- a. Beginning on the effective date of this Consent Agreement and Final Order, and for the duration of one year thereafter, Respondent shall maintain a solid waste inventory that documents the monthly and annual amounts of solid waste generated during this time frame. As part of this inventory, Respondent shall provide documentation that a complete and accurate hazardous waste determination has been performed on each solid waste stream generated, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation shall include the following information:
 - i.) a description of the waste stream, including a detailed description of the process or processes that generated the waste and the generation rate of the waste;
 - ii.) a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
 - iii.) a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
 - iv.) a determination of whether or not the waste is identified in Subpart C of 40 C.F.R. Part 261. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedures set forth in Subpart C, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste

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determination, please provide a detailed explanation and the basis to support this determination.

This documentation must be submitted to EPA no later than September 30, 2009.

- b. For any hazardous waste generated in the time frame between the effective date of this Consent Agreement and Final Order, and one year thereafter, Respondent shall provide a copy of all written shipping documentation, including hazardous waste manifests, for that waste. Such submittal shall be due no later than September 30, 2009. If no hazardous waste is generated during this time frame, Respondent shall provide a written statement to EPA stating this.
- c. No later than thirty (30) days after the effective date of this Consent Agreement and Final Order, Respondent shall provide EPA with written and photographic documentation to demonstrate that the wastes of concern referenced in paragraphs 19, 25, and 27 above have been properly removed from the premises and disposed properly.
- d. No later than thirty (30) days after the effective date of this Consent Agreement and Final Order, Respondent shall provide EPA with a written description of its plans to prevent further storage of hazardous wastes beyond the time frames allowed by the regulations.

51. All documents required to be submitted by this Consent Agreement and Final Order shall be sent to the attention of:

Mr. Edwin Buckner
AWMD/RESP
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

This information should be transmitted to EPA either electronically or in hard-copy. Documents transmitted in hard-copy should be on unbound, 8.5" by 11" paper (i.e., no binders, notebooks, or covers).

C. Parties Bound

52. This Final Order shall apply to and be binding upon Complainant and 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.

D. Reservation of Rights

53. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the 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.

54. 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.

55. 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.

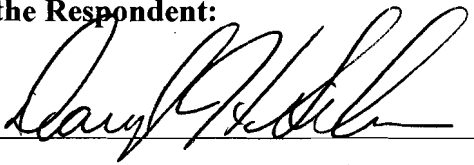
56. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid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

57. 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.

58. 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.

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For the Respondent:

By: 


9/16/08
Date

Printed Name: Daryl H. Silrum

Title: General Manager

For the Complainant:

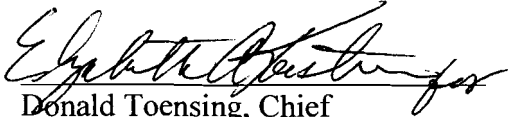
The United States Environmental Protection Agency



Alex Chen
Assistant Regional Counsel

September 19, 2008

Date



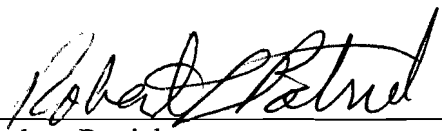
Donald Toensing, Chief
RCRA Enforcement and State Programs Branch
Air and Waste Management Division

9/19/08

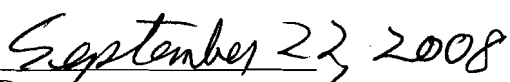
Date

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IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick
Regional Judicial Officer



Date

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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:

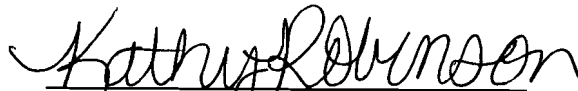
Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Candy Tucker, Quality Manager
Continental Manufacturing Chemist, Inc.
912 South State Street
Madrid, Iowa 50156

Dated: 9/22/08


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7