

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

Air Electric Machine Company, Inc. )

100 Main Street )  
Lohrville, Iowa 51453 )

RCRA I.D. No. IAD005275201 )

Respondent. )

Proceeding under Sections 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-07-2011-0014

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Air Electric Machine 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), 22.18(b)(2), and 22.18(b)(3) 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 (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

**Section I**

**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) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) 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 262 and 279.

## **Section II**

### **Parties**

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, pursuant to the following delegations by the Administrator of EPA: Delegation No. 8-9-A, dated May 11, 1994; Delegation No. R7-8-9-A, dated June 14, 2005; and Delegation No. R7-Div-8-9-A, dated June 15, 2005.

4. The Respondent is Air Electric Company, Inc. (Air Electric), a company incorporated under the laws of Iowa.

### **Statutory and Regulatory Framework**

5. 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.

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, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

### **General Factual Allegations**

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

8. Respondent, located at 100 Main Street in Lohrville, Iowa (Facility), is a metal fabrication shop specializing in producing ornamental windmills and decorative butterflies.

9. Respondent began operations at the Facility in 1937 and at the time of the inspection, employed approximately six people.

10. As part of its operations, during each calendar year, Respondent generates approximately 2 gallons of paint and solvent waste (D001), approximately 5 gallons of mineral spirits (D001). Respondent generates approximately 45 gallons of tart waste (D002) every two

years. Respondent also generates used oil and fluorescent lamps.

11. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261. Each of the wastes listed in paragraph 10 are a "solid waste" and all of the wastes except the used oil are also "hazardous wastes" within the meaning of these regulations.

12. Respondent is considered a Conditionally Exempt Small Quantity Generator (CESQG) of hazardous waste due to both its monthly generation (less than 100 kg) and accumulation of hazardous waste according to 40 C.F.R. Part 262.34. Respondent is a generator of used oil.

13. Respondent has been assigned a RCRA facility identification number of IAD005275201.

14. On or about March 11, 2010, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility (hereinafter "the inspection").

15. Based on the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a CESQG of hazardous wastes, pursuant to 40 C.F.R. Part 260 - 262.

### **Violations**

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

#### **Count 1**

##### **Failure to Make Hazardous Waste Determinations**

17. The allegations stated in paragraphs 7 through 16 are realleged and incorporated as if fully set forth herein.

18. 40 C.F.R. § 262.11 requires a generator of solid waste, as defined in 40 C.F.R. 260.10, to determine if a solid waste is a hazardous waste using methods prescribed in the regulations.

19. During the inspection, it was documented that Respondent was generating approximately two non-green tipped fluorescent lamps per month. The facility stated that they did not know the lamps were hazardous and that they were disposed in general trash.

20. During the inspection, it was documented that Respondent was generating approximately two gallons of paint waste per year. The waste paints are disposed in general trash without performing a hazardous waste determination.

21. During the inspection, it was documented that was storing Thermo-Sprex, an alkaline cleaner in a process vehicle. Respondent has not been using Thermo-Sprex for approximately 10 years and therefore, the material in the process vessel was being stored as waste. There was no hazardous waste determination performed on this waste at the time of the inspection.

22. At the time of the inspection, it was documented that Respondent was storing a 55-gallon container filled with waste residue of Dura-Gard Soke, a product designed to clean metal and add an iron phosphate coating to the metal surface. Dura-Gard Soke is no longer in use at the facility. There was no hazardous waste determination performed on this waste at the time of the inspection.

23. At the time of the inspection, it was documented that Respondent used a product called Tart to clean residual paint from hooks. The product is diluted with water and held in a 55-gallon container for use. The solution becomes unstable approximately once every two years and at that time is considered waste. There was no hazardous waste determination performed on this waste at the time of the inspection.

24. During the inspection, a half-full, 55-gallon steel container holding a substance identified as hook stripper was observed. Respondent stated that the hook stripper was no longer used at the facility. There was no hazardous waste determination performed on this waste at the time of the inspection.

25. During the inspection, there were seven containers holding materials that could not be identified by Respondent. There was no hazardous waste determination performed on this waste at the time of the inspection.

26. Respondent's failure to make a hazardous waste determination on the waste streams referenced in paragraphs 19 through 25 is a violation of 40 C.F.R. § 262.11.

## **Count 2**

### **Operation of a Hazardous Waste Treatment, Storage or Disposal Facility Without a Permit**

27. The allegations stated in paragraphs 7 through 26 are realleged and incorporated as if fully set forth herein.

28. Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations at 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter III of RCRA to have a permit for such activities.

29. According to 40 C.F.R. § 261.5(g)(3), a CESQG may either treat or dispose of hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which must be permitted, have interim status or be authorized by the State to handle such a program.

30. During the inspection, Respondent stated that waste paint was allowed to dry on paper or in containers and then placed in general trash.

31. According to 40 C.F.R. § 260.10, "treatment" means any method, technique, or process designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste.

32. The act of drying the paint is a process that changes the physical character of the waste with the intent to neutralize the waste. Respondent, therefore, treated waste on-site without the required permit or interim status.

33. Respondent does not have a RCRA Permit or Interim Status to operate as a treatment, storage, or disposal facility, and is therefore, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

### Count 3

#### Improper Used Oil Management

34. The allegations stated in paragraphs 7 through 33 are realleged and incorporated as if fully set forth herein.

35. The regulations at 40 C.F.R. § 279.22(c) require containers and aboveground tanks used to store used oil at generator facilities to be labeled or marked clearly with the words "Used Oil."

36. At the time of the 2007 inspection it was observed that 13, 2-gallon containers filled with used oil and one trough holding approximately 2 gallons of oil were stored at the Facility.

37. At the time of the 2007 inspection all fourteen containers lacked any labeling,

including the words "Used Oil."

38. Respondent's failure to properly label used oil containers is a violation of 40 C.F.R. § 279.22(c).

### **CONSENT AGREEMENT**

39. Respondent and Complainant agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

40. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO set forth below.

41. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO, but agrees to settle all claims alleged by Complainant under the terms set forth herein without further cost or delay.

42. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

43. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

44. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

45. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

46. By signing this CAFO, Respondent certifies that, to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

47. Based on the Respondent's representations in Paragraph 46 above, this CAFO 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.

48. 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.

49. This CAFO 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.

50. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

51. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$37,500 per day of non-compliance.

52. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 4 of the Final Order, that Respondent has fully implemented the actions required in the Final Order and that all requirements hereunder have been satisfied.

#### **Reservation of Rights**

53. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

54. Complainant reserves the right to take enforcement action against Respondent to enforce the terms and conditions of this CAFO.

55. Except as expressly provided herein, nothing in this CAFO 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 CAFO, 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.

### **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 CAFO, IT IS HEREBY ORDERED THAT:

#### **A. Compliance Actions**

1. Within thirty (30) days of the effective date of the CAFO, Respondent shall dispose of the tart waste at an acceptable facility. Respondent shall provide documentation, including bills of lading and/or manifests, that the tart waste has been properly disposed.
2. Within thirty (30) days of the effective date of the CAFO, Respondent shall provide a written certification stating that they will cease the practice of drying paint wastes.
3. The documentation required above shall be sent to

Deborah Bredehoft  
AWMD/WEMM  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

4. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

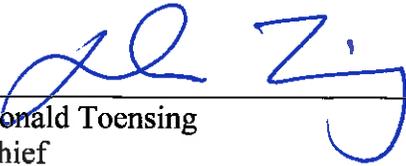
#### **B. Parties Bound**

5. This Final Order portion of this CAFO 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 CAFO.

FOR COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

8-22-11

Date

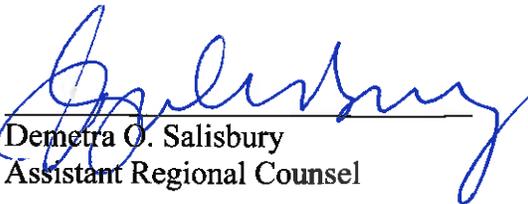
  
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Donald Toensing  
Chief

Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

8-22-11

Date

  
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Demetra O. Salisbury  
Assistant Regional Counsel

FOR RESPONDENT  
Air Electric Machine Company, Inc.

8/8/11  
Date

Randy Christensen  
Signature

Randy Christensen  
Printed Name

Resident  
Title

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

Aug. 24, 2011  
Date

Robert Patrick  
Robert Patrick  
Regional Judicial Officer

IN THE MATTER OF Air Electric Machine Company, Inc., Respondent  
Docket No. RCRA-07-2011-0014

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Randy Christensen, President  
Air Electric Machine Company, Inc.  
100 Main Street  
Lohrville, Iowa 51453

Dated: 8/24/11

  
Kathy Robinson  
Hearing Clerk, Region 7