

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2014 OCT 30 AM 8: 38

IN THE MATTER OF:)
)
Artistic Manufacturing Company, Inc.)
602 3rd Street SW)
Altoona, Iowa 50009)
)
)
RCRA ID: IAD005285853)
)
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-07-2014-0001

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Artistic Manufacturing Company, Inc., (Artistic or 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 (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

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 Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

2. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

3. The Respondent, Artistic Manufacturing Company, Inc., is an Iowa corporation authorized to do business within that state. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

Statutory and Regulatory Framework

4. 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).

5. 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 authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through 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. 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), 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 Allegations

6. Respondent's facility, which is the subject of this action, is located in Altoona, Iowa and manufactures church ware such as collection plates, crosses and communion sets. This location has 20 full-time and 14 part-time employees.

7. On May 3, 2012, an EPA contractor and an EPA employee conducted an official inspection of the Facility on behalf of EPA. In the course of their inspection the contractor documented several instances of mismanaged hazardous waste.

8. At the time of the inspection, Respondent's monthly generation rate of hazardous waste at the Facility was less than 100 kilograms per month, but Respondent was classified as a "small quantity generator" (SQG) under RCRA because at the time of the inspection it was accumulating hazardous waste on-site that was generated during a month in which Respondent had generated more than 100 kilograms of hazardous waste. That waste was on-site at the time of the EPA's inspection and, at the time of the inspection, Respondent was continuing to manage portions of hazardous wastes from January 2012 in which Respondent had accumulated in excess of 1,000 kilograms of hazardous waste at the Facility.

9. Respondent has been assigned the following EPA ID Number IAD005285853.

Violations

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

Count 1

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

10. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 9 above, as if fully set forth herein.

11. The regulations at 40 C.F.R. § 261.5(g)(2) provide that if a generator who generates less than 100 kilograms of hazardous waste in a calendar month should accumulate more than 1,000 kilograms of hazardous waste at any time, that generator shall be subject to the provisions of 40 C.F.R. § 262 which relate to generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a month. The regulations at 40 C.F.R. § 262.34(d) state that a generator who generates 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 the conditions listed in 40 C.F.R. § 262.34(d)(1)-(5) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to conduct weekly hazardous waste inspections

12. The regulations at 40 C.F.R. § 262.34(d)(2) require that while hazardous waste is being accumulated on-site, the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

13. Pursuant to 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 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.

14. At the time of the inspection, it was discovered that Respondent had not regularly conducted weekly inspections in the facility's hazardous waste accumulation area as required by the regulations cited above.

Failure to date hazardous waste accumulation containers

15. The regulations at 40 C.F.R. § 262.34(d)(4) require generators to comply with 40 C.F.R. § 262.34(a)(2), which requires generators to clearly mark the date upon which each period of accumulation began on each container.

16. At the time of the inspection, three containers of hazardous waste paint that were being managed outside of the building were not dated with an accumulation start date; and a one-quarter-full drum of waste TCE, that was labeled as hazardous waste, and was not labeled with an accumulation start date.

Failure to label hazardous waste accumulation containers

17. The regulations at 40 CFR 262.34(d)(4) referencing 40 CFR 262.34(a)(3) require generators to label or mark each container of hazardous waste being stored on-site with the words, "Hazardous Waste".

18. At the time of the inspection, there were three containers of hazardous waste paint that were being managed outside of the building. These containers were not labeled as hazardous waste.

Failure to close hazardous waste containers

19. The regulations at 40 C.F.R. § 262.34(d)(2) require a generator to comply with the regulations at 40 C.F.R. § 265.173(a), which requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

20. At the time of the inspection, there was a full, 55-gallon drum of hazardous waste toluene that had a threaded bung that was not closed.

Failure to post emergency information next to the telephone

21. The regulations at 40 CFR 262.34(d)(5)(ii)A through C require a generator of hazardous waste to post certain emergency information next to the telephone. This information is as follows: the name and telephone number of the emergency coordinator; the location of a fire extinguisher, spill control material and a fire alarm, if there is one; and the telephone number of the fire department if there is no direct alarm.

22. At the time of the inspection there was no emergency information posted next to the telephone.

Accumulation of hazardous waste with incompatible waste

23. The regulations at 40 CFR 262.34(d)(2) referencing 40 CFR 265.177(c) require that a storage container of hazardous waste that is incompatible with any other material that is stored nearby must be separated or protected from the other materials by means of a dike, berm, wall or other device.

24. At the time of the inspection, there was a full drum of waste toluene and a quarter-full drum of waste TCE sludge in the waste accumulation area. In addition to these drums, there were five product containers in this area that held materials that were incompatible with the TCE and/or the waste toluene. These included: GF Clean 410; Spectrum APC; ChemCote 3114; CrysCoat 187, and; Antique Black Solution M20. None of the materials were

separated from the TCE or toluene by means of a dike, berm, wall or other device.

Failure to maintain the facility to prevent a release of hazardous waste

25. The regulations at 40 CFR 262.34(d)(4) referencing 40 CFR 265.31 require that the owners and operators of facilities that store hazardous waste must be maintained and operated so as 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.

26. At the time of the inspection, Respondent was accumulating containers of hazardous waste outside of the building. Respondent told the inspector that at least some of these containers of hazardous waste were placed outside at least one year prior to the inspection and that prior to being placed outside, they were stored in a nearby warehouse. At the time of the inspection, these containers were stored with scrap and other discarded items, had a piece of wood placed on top of the containers, and had been stored in the elements for at least a year.

27. 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 C of RCRA to have a permit or interim status for such activities. As stated in paragraphs 10 through 23 above, the Respondent failed to meet the requirements of 40 C.F.R. § 262.34(d)(1)-(5), and therefore, would not have an exemption from the permitting requirement.

28. Respondent's failure to obtain a hazardous waste storage permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

29. 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.

30. 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.

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

32. 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 Consent Agreement and Final Order.

33. 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.

34. 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.

35. 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.

36. The effect of settlement described in the Consent Agreement and Final Order is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 37 below.

37. Respondent certifies that by signing this Consent Agreement and Final order 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.

38. 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.

39. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Eleven Thousand Eight Hundred Seventy-One Dollars (\$11,871) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order below.

40. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA.

41. 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 cited in the preceding paragraphs.

42. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

Effective Date

43. This Consent Agreement and Final Order shall be effective upon 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.

Reservation of Rights

44. 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-Seven Thousand Five Hundred Dollars (\$37,500.00) 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

FINAL ORDER

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

A. Payment of Civil Penalty

1. Within sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of Eleven Thousand Eight Hundred Seventy-One Dollars (\$11,871).
2. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

4. 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. Compliance Actions

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

6. For a period of one year, on a quarterly basis, Respondent will agree to provide documentation to EPA Region 7 of current hazardous waste determinations conducted in the anodization room. For one year following the effective date of this Order, the hazardous waste determination for acids and caustics in the anodization room will consist of one day of representative sampling each quarter. The testing method shall include testing the wastewater at the point before the wastewater enters the wastewater treatment tank. The test protocol shall consist of approximately 5 samples per 8-hour shift or approximately every 1.5 hours of operation for one representative day each quarter. The first round of the anodization room tests shall be provided to the EPA in accordance with paragraph 7 below beginning thirty days after the effective date of this order and continuing each quarter thereafter until the first year of testing is completed.

7. For a period of one year, on a quarterly basis, Respondent will agree to provide documentation to EPA Region 7 of the total amount of hazardous waste generated by and/or accumulated at Respondent's Facility (including the toluene and TCE sludge) with a brief explanation stating how the hazardous wastes are managed at the facility, and documentation as to how it is removed.

8. If Respondent generates or accumulates hazardous waste in such quantities that it becomes a small quantity generator, it must provide the following:

- i. A narrative outlining that it is completing required weekly inspections; and
- ii. A copy of the required posting placed next to the telephone, showing that it includes the locations of the spill control equipment and the fire extinguishers.

9. Respondent shall submit all documentation generated to comply with the requirements as set forth in Section B this Final Order to the following address:

Deborah Bredehoft
AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

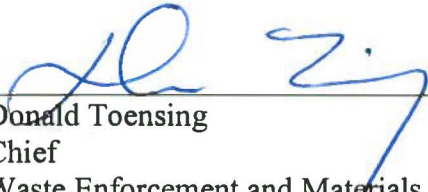
C. Parties Bound

10. The 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.

COMPLAINANT:

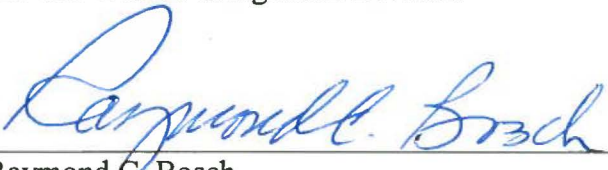
U.S. ENVIRONMENTAL PROTECTION AGENCY

10-27-14
Date



Donald Toensing
Chief
Waste Enforcement and Materials Management
Branch
Air and Waste Management Division

Oct 27, 2014
Date

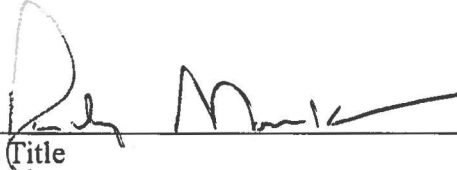


Raymond C. Bosch
Office of Regional Counsel

FOR RESPONDENT:

ARTISTIC MANUFACTURING COMPANY, INC.

10-3-14
Date

 Pres.
Name and Title

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

10-30-14
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Artistic Manufacturing Company, Inc., Respondent
Docket No. RCRA-07-2014-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to:

Artistic Manufacturing Company, Inc.
602 3rd Street SW
Altoona, Iowa 50009

Dated: 10/30/14



Kathy Robinson
Hearing Clerk, Region 7