

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

IN THE MATTER OF:)
)
Omaha Standard LLC,)
d/b/a Omaha Standard Palfinger)
)
3501 South 11th Street)
Council Bluffs, Iowa 51501)
)
RCRA I.D. No. IAR000505412)
)
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-07-2013-0030

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Omaha Standard, LLC (d/b/a Omaha Standard Palfinger) (Respondent or Omaha Standard) 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).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 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 (CA/FO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

Parties

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

4. The Respondent is Omaha Standard LLC, a limited liability company incorporated under the laws of Delaware.

Statutory and Regulatory Framework

5. The state of Iowa has not been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA enforces the federal RCRA program in Iowa, pursuant to federal regulations. 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 of RCRA, 42 U.S.C. § 6928.

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 \$37,500 per day are now authorized for violations of Subchapter III of RCRA that occurred after January 12, 2009.

Factual Background

7. Respondent is a Delaware limited liability company authorized to do 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 3501 S. 11th Street, Council Bluffs, Iowa, fabricates, assembles, and coats truck bodies, truck accessories and hoists. Omaha Standard employs approximately 320 people at this location, and began operations at this location in 2006.

9. As part of its operations, Respondent generates hazardous waste and universal waste. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in Paragraph 10. Hazardous wastes generated by Respondent, along with their waste codes, include: spent solvent (D001, F003), waste solvent (D001, F003), flammable waste solids (D001, F003), spent parts washer solvent (D039), and old e-coating materials (D001 or D002). Universal waste generated by Respondent includes waste fluorescent lamps and waste batteries.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Parts 260 and 261. The wastes listed in the second sentence of Paragraph 9 “solid wastes” and “hazardous wastes” within the meaning of these regulations. The fluorescent lamps and waste batteries listed in the last sentence of paragraph 9 are “universal wastes” pursuant to 40 C.F.R. Part 273.

11. On or about February 8 and 9, 2012, an EPA contractor from the firm of Booz Allen Hamilton conducted a Compliance Evaluation Inspection at Respondent’s facility (hereinafter “the February 2012 inspection”).

12. At the time of the February 2012 inspection, Respondent’s hazardous waste notification on file with the EPA as of February 1, 2012, stated that the facility was a “large quantity generator,” i.e., that the facility generated greater than 1,000 kilograms of hazardous waste per month.

13. At the time of the February 2012 inspection, Respondent had generated and had in storage at the facility the hazardous wastes and universal wastes listed in Paragraph 9.

14. During the February 2012 inspection, the inspector observed several violations of RCRA, which are set forth below.

Violations

15. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

I. Failure to Perform Hazardous Waste Determinations

16. 40 C.F.R. §262.11 requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

17. At the time of the February 2012 inspection, Respondent was storing six containers of waste material in the hazardous waste storage area that had been generated by a process that had been discontinued. The facility representative stated that the materials had been there since 2006. Three of the containers were subsequently determined to be hazardous waste.

18. At the time of the inspection, Respondent had not properly performed hazard waste determinations on the wastes listed in Paragraph 17.

19. Respondent's failure to characterize the wastes listed in Paragraphs 17 is a violation of 40 C.F.R. §262.11.

II. Operation of a Hazardous Waste Treatment and Storage Facility Without a RCRA Permit

20. Section 3005 of RCRA, 42 U.S.C. § 6925 requires each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

A. Storage of Hazardous Waste Over 90 Days

21. At the time of the inspection, Respondent had in storage three containers of waste from a discontinued process, which were hazardous wastes bearing the waste code D001 or D002. The facility representative stated that the containers had been there since 2006, when the containers had been moved from the previous facility.

22. Facilities classified as “large quantity generators” are allowed to store hazardous waste without a permit for up to 90 days pursuant to 40 C.F.R. §262.34, but storage of hazardous waste beyond 90 days constitutes operation of a hazardous waste storage facility without a permit.

23. Respondent’s storage of D001 and D002 hazardous waste for, at a minimum, approximately six years at their facility constitutes operation of a hazardous waste storage facility without a permit.

B. Failure to Comply with Generator Requirements

24. Large quantity generators of hazardous waste are allowed to store hazardous waste at their facility provided that they comply with various waste handling requirements. 40 C.F.R. §262.34. If a generator fails to comply with these waste handling requirements, they are not allowed to store hazardous waste at their facility for any length of time. Respondent failed to comply with the following waste handling requirements:

1. Failure to label and date containers of hazardous waste

25. 40 C.F.R. §262.34(a)(2) requires that hazardous waste containers must be clearly marked with the date that accumulation began, and 40 C.F.R. §262.34(a)(3) requires that hazardous waste containers be clearly marked with the words “hazardous waste.”

26. At the time of the February 2012 inspection, Respondent had one fifty-five gallon drum containing approximately ten gallons of still bottoms from the solvent recovery still (waste codes D001 and F003) that was not labeled with either an accumulation start date or with the words “hazardous waste.”

27. In addition, there were two fifty-five gallon drums of still bottoms (waste codes D001 and F003) that were not labeled with either an accumulation start date or with the words “hazardous waste.”

2. Failure to maintain a hazardous waste container in good condition

28. 40 C.F.R. § 262.34(a)(1), referencing 40 C.F.R. § 265.171, requires that hazardous waste containers be maintained in good condition .

29. One of the three containers (a five-gallon metal container) of waste from the discontinued e-coating process was dented and rusting.

3. Failure to conduct weekly inspections of the hazardous waste container storage area

30. 40 C.F.R. §262.34(a)(1), referencing 40 C.F.R. § 265.174, requires that hazardous waste container storage areas must be inspected on a weekly basis.

31. Between July, 2009 and December, 2011, Respondent failed to conduct thirty-two weekly inspections of the hazardous waste storage area.

4. Failure to comply with contingency plan requirements

32. At the time of the February 2012 inspection, the facility contingency plan (which the facility referred to as the Emergency Response Plan) was deficient as follows:

- a. Failure to submit an updated contingency plan to emergency response agencies;
- b. Failure to include a description of arrangements with emergency agencies;
- c. Failure to include the home addresses and the home and office telephone numbers of the emergency coordinators;
- d. Failure to describe the capabilities of the emergency equipment; and

e. Failure to include the evacuation signal and the alternative evacuation routes within the Evacuation Plan portion of the Contingency Plan.

f. The deficiencies listed above in paragraphs 32 a. through e. above demonstrate that Respondent failed to follow the requirements of 40 C.F.R. §262.34(a)(4), referencing 40 C.F.R. §265.53(b) through (f).

5. Failure to maintain a description of the amount and type of continuing education to be provided to employees who handle hazardous waste

33. Examination of documentation provided at the time of the February 2012 inspection revealed that Respondent had failed to maintain a description of the amount and type of continuing education to be provided to employees who handle hazardous waste, as required by 40 C.F.R. §262.34(a)(4), referencing 40 C.F.R. §265.16(d)(3).

34. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 25 through 33 above, Respondent was not authorized to store hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit.

III. Failure to Comply with Universal Waste Requirements

35. The rules governing the handling of universal waste are found at 40 C.F.R. Part 273. These rules allow less stringent handling of universal waste, which includes mercury-containing lamps, and waste batteries, provided that handlers of these materials comply with the rules.

36. Respondent failed to comply with the universal waste rules as follows:

1. Failure to label and keep universal waste containers closed

37. 40 C.F.R. §273.14(e) requires that containers of universal waste mercury containing lamps be labeled while in storage with the words “universal waste—lamps,” “waste lamps,” or “used lamps.”

38. 40 C.F.R. §273.13(d)(1) requires that containers of universal waste mercury containing lamps be closed while in storage.

39. At the time of the February 2012 inspection, there were two structurally sound boxes of universal waste lamps that were not properly labeled, and one box that was not closed.

2. Failure to label containers of waste batteries

40. 40 C.F.R. §273.14(a) requires that containers of waste batteries be labeled with “universal waste—batteries,” “waste batteries,” or “used batteries.”

41. At the time of the February 2012 inspection, there was one structurally sound box containing nine universal waste batteries that was not properly labeled in accordance with the regulations.

3. Failure to identify the date upon which accumulation of universal waste began

42. 40 C.F.R. §273.15(c) requires that universal waste handlers have some method of indicating the accumulation start date of universal waste at their facility.

43. At the time of the February 2012 inspection, there were two boxes of universal waste lamps and one box of universal waste batteries that were not marked with the accumulation start date, nor was there any tracking mechanism in place to indicate the accumulation start date.

44. The allegations set forth in Paragraphs 37 through 43 above demonstrate that Respondent violated the universal waste rules at 40 C.F.R. Part 273.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
2. Respondent admits the jurisdictional allegations of this CA/FO 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 CA/FO set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.
4. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the CA/FO.
5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This CA/FO 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.
7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully

authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil administrative penalty of \$72,210.00 as set forth in Paragraph 1 of the Final Order.

10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

11. This CA/FO 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.

12. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 6 of the Final Order, that all requirements hereunder have been satisfied.

13. By its signature on this Consent Agreement, Respondent certifies that it is currently in compliance with RCRA.

Reservation of Rights

14. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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) 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.

15. 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 CA/FO.

16. Except as expressly provided herein, nothing in this CA/FO 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.

17. Notwithstanding any other provisions of the CA/FO, 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.

18. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

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 CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of \$72,210.00.
2. Payment of the penalty shall be made either by cashier or certified check or by 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.”

The Respondent shall reference the Docket Number on the check or transfer. A copy of the check or transfer shall also be mailed to EPA’s representative identified in Paragraph 4.b. of the Final Order below, and to:

Belinda Holmes, Senior Counsel
EPA Region 7 CNSL/CMBR
11201 Renner Boulevard
Lenexa, Kansas 66219

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Respondent shall perform the activities listed below within the time frames set out for each:

- a. Within thirty (30) days of the effective date of this CA/FO, Respondent will provide a revised copy of the facility's contingency plan that conforms to the requirements in 40 C.F.R. §265.52.
- b. The above submission required pursuant to this Paragraph shall be sent to:

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

C. Parties Bound

5. This Final Order portion of this CA/FO 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 CA/FO.

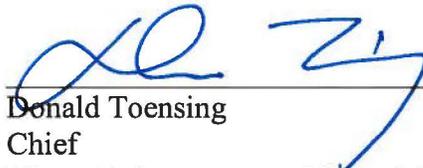
D. Termination

6. The provisions of this CA/FO 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

9-23-13

Date



Donald Toensing
Chief

Waste Enforcement and Materials Management Branch
Air and Waste Management Division

Sept 23 2013

Date



Belinda L. Holmes
Senior Counsel
Chemical Management Branch
Office of Regional Counsel

*In the matter of
Omaha Standard LLC, d/b/a Omaha Standard Palfinger
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For Respondent Omaha Standard LLC:

By:

9/17/2013
Date



Signature

Jason L. Holt
Printed Name

*In the matter of
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IT IS SO ORDERED. This Final Order shall become effective immediately.

9-25-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Omaha Standard LLC, d/b/a Omaha Standard Palfinger, Respondent
Docket No. RCRA-07-2013-0030

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:

holmes.belinda@epa.gov

Copy by First Class Mail to Respondent:

Michael J. Hecker
Associate
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202

Dated: 9/25/13



Kathy Robinson
Hearing Clerk, Region 7