

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

IN THE MATTER OF: )  
 )  
Thurston Manufacturing Company )  
1708 H Avenue )  
Thurston, Nebraska 68062 )  
 )  
Respondent. )  
RCRA ID: NER000000687 )  
 )  
 )  
Proceeding under Section 3008(a) of )  
the Resource Conservation and Recovery )  
Act as amended, 42 U.S.C. § 6928(a) )  
 )

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. RCRA-07-2013-0029

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Thurston Manufacturing Company (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) 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 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 Director of the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

3. The Respondent, Thurston Manufacturing Company (Thurston), is a Nebraska corporation. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).

### **Statutory and Regulatory Framework**

4. The State of Nebraska 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 Nebraska’s hazardous waste regulations are located at Neb. Admin. Code Title 128 (2014). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the 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. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

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 at 1708 H Avenue, Thurston, NE 68062 (Facility).

7. The Facility is sited on approximately 5 acre and contains three building and one outside trailer used for the storage of paint product.

8. The Facility opened in 1971 and currently employs approximately 65 people. The Facility operates 24 hours per day, Monday thru Friday, running 3 shifts.

9. Respondent’s primary North American Industrial Classification System (NAICS) code

10. At the Facility, Respondent manufactures and assembles agricultural equipment, including side dump trailers, tillage equipment, and fertilization injection equipment. At the time of the inspection it produced two to three side dump trailers and 10,000 pieces of other agricultural equipment per month.

11. As part of its operation, Respondent generates waste, both solid and hazardous. The operations on site include fabrication of sheet metal (welding, bending, plasma cutting, shearing, and sawing) and machining (drilling, tapping, and sawing). Respondent also primes and paints its manufactured products.

12. The solid waste generated by Respondent include waste paint solvent, reclaimed paint solvent, still bottoms from a solvent recycling machine, waste paint, solvent soaked cloth rags, lubricant aerosol cans, paint aerosol cans, degreaser aerosol cans, used oil, used oil filters, spent fluorescent lamps.

13. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at Neb. Admin. Code Title 128, Chapters 2 and 3. Several solid wastes identified in the paragraph above are also hazardous wastes, including: waste paint solvent, reclaimed paint solvent, still bottoms from a solvent recycling machine, solvent soaked cloth rags, and spent fluorescent lamps

14. On August 9, 2011, EPA Region 7 conducted an inspection of the Facility.

15. Respondent filed a hazardous waste notification with the Nebraska Department of Environmental Quality (NDEQ) on October 16, 1995.

16. Respondent has been assigned the following EPA ID Number: NER000000687.

17. Respondent's facility is a Small Quantity Generator because it generates between 100 kilograms and 1,000 kilograms of hazardous waste per calendar month. See Neb. Admin. Code, Title 128 Chapter 9, 007.01

### **Violations**

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

### **Count I**

### **FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION**

18. Complainant hereby incorporates all the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

19. 40 C.F.R. § 262.11 and Neb. Admin. Code, Title 128 Chapter 4 § 002, referenced by Chapter 9 § 007.01 require generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

13. At the time of the inspection, Respondent failed to make a hazardous waste determination on the following hazardous waste streams:

- a. six 5-gallon containers of hardened black and blue paint containing some amount of methyl ethyl ketone (MEK),
- b. one 5-gallon container of waste solvent with paint solids containing some amount of MEK,
- c. twelve 7.5-gallon bags (90 pounds) of still bottoms,
- d. Rags soaked with various solvent (e.g. MEK, methyl amyl ketone, and/or lacquer) soaked rags, and
- e. Spent fluorescent lamps.

14. Respondent's failure to make a hazardous waste determination is in violation of 40 C.F.R. § 262.11 and Neb. Admin. Code Title 128 Chapter 9 § 007.

### **Count II**

#### **OPERATING A TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

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

16. Section 3005 of RCRA, 42 U.S.C. § 6925 and implementing regulations require 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. The regulations found at 40 C.F.R. § 262.34 allow for the storage of a certain quantity of waste without a permit or interim status provided that certain conditions are met.

17. Similarly, Neb. Admin. Code Title 128, Chapter 12 § 001.01 requires each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste listed in Neb. Admin. Code Title 128, Chapters 2 and 3 to have a permit for such activities.

18. Neb. Admin. Code Title 128 Chapter 12 § 001.03A specifically excludes small quantity generators who may accumulate such hazardous waste in containers on-site at a facility for ninety (90) days without a RCRA permit or without having RCRA interim status, provided certain conditions are met. Those conditions which must be met are set forth at Neb. Admin. Code Title 128, Chapter 9.

19. Respondent does not have a permit to store hazardous waste or interim status which would allow it to store hazardous waste at the Facility.

**Failure to Close a Hazardous Waste Satellite Accumulation Container**

20. 40 C.F.R. § 262.34(d)(1)(i) referencing 40 C.F.R. § 262.273(a) and Neb. Admin. Code Title 128, Chapter 9 § 007.03C referencing Neb. Admin. Code Title 128, Chapter 10 § 04.01A2 require the Respondent to keep satellite hazardous waste containers closed during storage, except when necessary to add or remove waste.

21. During the inspection, the inspector observed one five gallon container of waste solvent with paint solids located near the paint booth area that was not closed. The waste solvent contained MEK, which is a listed hazardous waste (F005).

**Failure to Label Hazardous Waste Satellite Accumulation Containers**

22. The Regulations at 40 C.F.R. § 262.34(c)(1)(ii) and Neb. Admin. Code Title 128, Chapter 9 § 007.04A2 require Respondent to clearly mark containers which contain hazardous waste with the words “hazardous waste” or other words which will identify the contents of the containers.

23. During the inspection, the inspector observed two five gallon hazardous waste containers in the paint booth area that contained D001, F003, and D0 hazardous wastes. Neither container was labeled with the words “hazardous waste” or any other words that conveyed the contents of the container.

**Failure to Ensure Employees are Familiar with Proper Waste Handling and Emergency Procedures**

24. Neb. Admin. Code Title 128, Chapter 9 § 007.10 and 40 C.F.R. § 262.34(d)(5)(iii) requires facility personnel to be familiar proper waste handling and emergency procedures, relevant to their responsibility during normal facility operations and emergencies.

25. During the inspection, Respondent’s facility representative indicated to the EPA inspector that no such training described in the paragraph above had been given to their employees.

**Failure to Make Arrangements of Agreements with Emergency Services**

26. Neb. Admin. Code Title 128, Chapter 17 § 007.01C and D, and 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R § 265.37(a)(1)(3) and (4) require Respondent to make arrangements with state and local emergency response teams, contractors and equipment suppliers and make arrangements to familiarize local hospitals with the properties of the hazardous waste handled at the facility and the types of injuries or illness which could result from fires, explosions, or releases at the facility.

27. During the inspection, Respondent’s facility representative indicated to the

EPA inspector that no such arrangements as described in the paragraph above had been made.

### **Failure to Post Emergency Preparedness Information**

28. Neb. Admin. Code Title 128, Chapter 9 § 007.09B and 40 C.F.R. § 262.34(d)(5)(ii)(B) require that the locations of fire extinguishers, spill control materials, and fire alarms, if present, must be posted near the telephone.

29. During the inspection, the inspector observed that the fire alarm, extinguisher, and spill equipment were not posted next to the telephone.

### **Treatment of Hazardous Waste without a Permit**

30. Nebraska Admin. Code Title 129, Chapter 12 § 001.01 and 40 C.F.R. § 270.1(c) require a permit in order to treat hazardous waste.

31. During the inspection, the inspector observed six 5-gallon containers of hardened paint waste that had been evaporated prior to disposal. The waste paint was mixed with solvent (MEK) and was therefore, hazardous waste.

32. During the inspection, facility representatives informed the EPA inspector that prior to disposal, Respondent air-dries solvent soaked cloth rags (characteristic waste code D001 and listed F003 and F005); and still-bottoms (waste codes D001, F003, and F005) were being mixed with floor dry.

33. In accordance with 42 U.S.C. § 6903, "treatment" includes any method, technique or process that changes the physical character of any hazardous waste so as to render such waste safer for transport or amenable for storage.

34. Evaporation of the solvents and addition of floor dry are considered treatment, and, therefore, require a permit.

35. At the time of the inspection, Respondent did not have a permit for treatment of hazardous waste.

### **Illegal Disposal of Hazardous Waste**

36. Nebraska Admin. Code Title 129, Chapter 12 § 001.01 and 40 C.F.R. § 270.1(c) require a permit for the disposal of hazardous waste.

37. During the inspection, the inspector photographed containers being used to evaporate blue paint. In the photograph, immediately next to the evaporating paint containers, blue paint has been released and disposed of onto the ground.

38. In accordance with 42 U.S.C. § 6903, "disposal" includes the spilling or leaking of

a waste into the environment. Therefore, the release of paint onto the ground is considered disposal.

39. Respondent's failure to comply with the regulations permitting operation of facility transporting, storing, or disposing of hazardous waste constitutes a violation of Nebraska Admin. Code Title 128, Chapter 12 § 001.01 and 40 C.F.R. § 262.34.

### **Count III**

#### **OFFERING HAZARDOUS WASTE FOR TRANSPORT WITHOUT A PREPARED UNIFORM HAZARDOUS WASTE MANIFEST**

##### **Failure to Prepare a Hazardous Waste Manifest**

40. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 39 above, as if fully set forth herein.

41. Neb. Admin. Code Title 128, Chapter 10 § 002 as referenced by Neb. Admin. Code Title 128 Chapter 9 § 007.06 and 40 C.F.R. § 262.20 require that a uniform hazardous waste manifest must be prepared for the off-site transport of hazardous waste.

42. During the inspection, the facility representative disclosed that the following hazardous wastes were disposed of in the general trash:

- a. six 5-gallon containers of hardened black and blue paint, containing some amount of MEK;
- b. air-dried 5-gallon containers of waste solvent and paint solvent
- c. air-dried solvent soaked rags;
- d. still-bottoms mixed with floor dry; and
- e. spent fluorescent bulbs.

43. The facility representative disclosed that a uniform manifest for the off-site transport of hazardous waste was not prepared for any of the hazardous wastes listed in the paragraph above when picked up by a disposal company.

44. Respondent's failure to prepare a uniform manifest for the offsite transport of hazardous waste and failure to identify a transport with an EPA ID permit to transport hazardous waste is a violation of Nebraska Admin. Code Title 128 Chapter 10 § 002 as referenced by Chapter 9 § 007.06 and 40 C.F.R. § 262.20(a)(1).

##### **Failure to Use Transporter with EPA ID Number**

45. Neb. Admin. Code Title 128, Chapter 10 § 002.04 as referenced by Neb. Admin. Code Title 128 Chapter 9 § 007.06 and 40 C.F.R. § 262.12(c) require generators transporting hazardous wastes must use a transporter with an EPA ID number.

46. During the inspection, the inspector determined that the waste streams being disposed of in the general trash, as alleged in Paragraph 42, were being transported by a transporter without an EPA ID.

47. Respondent's failure to use a transporter with an EPA ID number is a violation of Neb. Admin. Code Title 128 Chapter 10 § 002 as referenced by Chapter 9 § 007.06 and 40 C.F.R. § 262.12(c).

### **CONSENT AGREEMENT**

1. 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.

2. 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.

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

4. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. 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.

6. 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.

7. 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.

8. The effect of settlement described in Paragraph 7 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 9, below, of this Consent Agreement and Final Order.

9. 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.



10. 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.

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

#### **Effective Date**

12. 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**

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

#### **Compliance Actions**

1. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:
2. Respondent shall submit the documentation described below to EPA, in accordance with Paragraph 7:
  - a. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order:
    - 1) Verify that required training has been completed by employees; and
    - 2) Provide a list of the location of emergency spill equipment and fire extinguishers and a map of where the equipment can be found.
  - b. On a quarterly basis for a year, starting 30 days after the effective date of this Consent Agreement and Final Order: A copy of all manifest documents of hazardous waste shipped off-site.
3. Respondent shall submit all documentation generated to comply with the requirements as set forth in the paragraphs above of this Final Order to the following address:

Berla Johnson-Jackson, AWMD/WEMM  
U.S. Environmental Protection  
Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

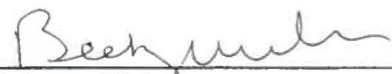
#### **Parties Bound**

4. 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.

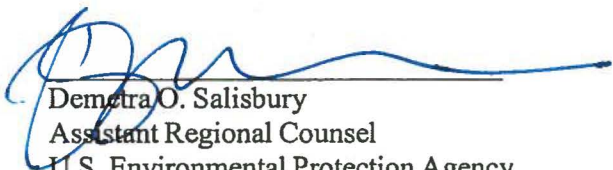
COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

4/15/16  
Date

  
\_\_\_\_\_  
Rebecca Weber  
Director  
Air and Waste Management Division

3/11/16  
Date

  
\_\_\_\_\_  
Demetra O. Salisbury  
Assistant Regional Counsel  
U.S. Environmental Protection Agency

FOR RESPONDENT, THURSTON MANUFACTURING COMPANY

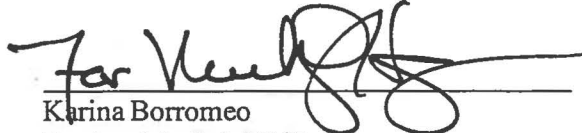
3-10-16  
Date

 CEO  
Signature

IT IS SO ORDERED. This Final Order shall become effective upon filing.

4-15-16

Date

  
\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer