

Parties

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

4. Respondent is Bertch Cabinet Manufacturing, Inc., a corporation authorized to operate under the laws of Iowa.

Statutory and Regulatory Framework

5. 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).

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). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$95,284 for violations that occur after November 2, 2015. 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 Background

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

8. Respondent’s facility is located at 4747 Crestwood Drive, Waterloo, Iowa. Respondent manufactures kitchen and bath cabinets and doors. Respondent employs approximately 650 people.

9. Since 1979, Respondent’s generator status has fluctuated between a Large Quantity Generator (LQG) and a Small Quantity Generator (SQG). On or about January 16, 2008, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a LQG of hazardous waste. Since that date, Respondent has maintained its generator status as an

LQG. LQGs generate 1,000 kilograms per month or more of hazardous waste, or more than 1 kilogram per month of acutely hazardous waste.

10. On or about September 22-23, 2015, representatives of the Environmental Protection Agency conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

11. At the time of the inspection, the following solid wastes were present:

- a. Solvent Contaminated Wipes located throughout the facility; and
- b. Sixteen, 55-gallon containers of “resin” and labeled “hazardous waste” adjacent to the hazardous waste container accumulation area of the Oasis building.

12. At the time of the inspection, the following hazardous wastes were present:

- a. Solvent Contaminated Wipes located throughout the facility. This waste stream is D001 characteristic hazardous waste, and F003 and F005 listed hazardous waste.
- b. Sixteen, 55-gallon containers of “resin” and labeled “hazardous waste” adjacent to the hazardous waste container accumulation area of the Oasis building. This waste stream is D001 characteristic hazardous waste.

13. At the time of the inspection, the following universal waste containers were present:

- a. One fiberboard container holding ten (10) spent HID universal waste lamps in Building 9;
- b. One four-foot container of spent lamps in Building 9;
- c. One eight-foot container of spent lamps in Building 9;
- d. One, five-gallon container holding fifteen (15) universal waste batteries in Building 9;
- e. One, eight-foot container holding spent lamps in Building 2–Timber-Gate 1.

14. During the inspection, hazardous waste manifests were collected and reviewed.

15. Respondent has been assigned the following EPA ID Number: IAD087132023.

Violations

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

Count 1

Failure to Conduct a Hazardous Waste Determination

17. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.

18. The regulations at 40 C.F.R. § 261.4(a)(26) state that solvent-contaminated wipes are not solid wastes for purposes of RCRA, provided certain conditions are met. If a generator fails to comply with one of these conditions, the generator must perform a hazardous waste determination on the solvent-contaminated wipes and manage the solvent-contaminated wipes as hazardous waste if they are determined to be hazardous pursuant to 40 C.F.R. § 262.11.

19. During the inspection, the following condition was not being met: the solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." 40 C.F.R. § 261.4(a)(26)(i).

20. Specifically, at the time of the inspection, nine containers located throughout Respondent's facility were not labeled "Excluded Solvent-Contaminated Wipes."

21. Respondent's failure to comply with the provision cited above resulted in the solvent-contaminated wipes not qualifying for the exemption to the definition of solid waste. At the time of the inspection, Respondent had not conducted a hazardous waste determination on the solvent-contaminated wipes.

22. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste stream is a violation of 40 C.F.R. § 262.11.

Count 2

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

23. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.

Generator Requirements

24. The regulations at 40 C.F.R. § 262.34(a) state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to

comply with any of these conditions, the generator is not allowed to store hazardous waste at its facility for any length of time. Respondent failed to comply with the following condition:

Failure to conduct weekly hazardous waste inspections

25. The regulation at 40 C.F.R. § 262.34(a)(1)(i) requires that while being accumulated on-site, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

26. 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 accumulated, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

27. At the time of the inspection, Respondent's representative stated that inspections are performed every two weeks to a month.

28. Because Respondent failed to comply with the generator requirement as set forth in Paragraphs 24 through 27 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Storage Over Ninety Days

29. The regulation at 40 C.F.R. § 262.34(b) states that a generator who accumulates hazardous wastes for more than ninety (90) days is an operator of a storage facility and must comply with 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, unless he has been granted an extension to the ninety (90) day period. Facilities classified as "Large Quantity Generators" may store hazardous waste at their facility without a permit no more than ninety (90) days.

30. At the time of the inspection, Respondent had been storing sixteen, 55-gallon containers of "resin". Each container was labeled as "hazardous waste" and marked with an accumulation start date of January 7, 2013. These containers were located adjacent to the hazardous waste container accumulation area of the Oasis building. These containers of hazardous waste were stored for more than ninety (90) days.

31. By storing hazardous waste on-site for greater than 90 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265, and the permit requirements of 40 C.F.R. Part 270.

32. 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 hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities. Respondent did not have a permit or interim status.

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

Count 3
Failure to Comply with Universal Waste Management Requirements

34. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.

Failure to label universal waste containers

35. The regulation at 40 C.F.R. § 273.14(e) requires small quantity handlers of universal waste to clearly label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: "Universal Waste – Lamp(s)" or "Waste Lamp(s)," or "Used Lamp(s)."

36. The regulations at 40 C.F.R. § 273.14(a) require small quantity handlers of universal waste to clearly label or mark each battery or container or package in which such batteries are contained with one of the following phrases: "Universal Waste – Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

37. At the time of the inspection, one eight-foot universal waste container of spent lamps located in Timber-Gate 1 was not properly labeled or marked.

38. At the time of the inspection, one five-gallon container of spent batteries located in Building 9 maintenance area was not properly labeled or marked.

39. Respondent's failure to properly label the universal waste lamp containers described above is a violation of 40 C.F.R. § 273.14(a) and (e).

Failure to date universal waste containers

40. The regulation at 40 C.F.R. § 273.15(c)(1) requires small quantity handlers of universal waste to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

41. At the time of the inspection, Respondent failed to properly label the following containers with the earliest date that any universal waste in the container became a waste or was received:

- a. One eight-foot universal waste container of spent lamps located in Timber-Gate 1;
- b. One four-foot universal waste container of spent lamps located in Building 9 maintenance area; and
- c. One eight-foot universal waste container of spent lamps located in Building 9 maintenance area.

42. Respondent's failure to properly label the universal waste containers described above with the earliest date that any universal waste in the container became a waste or was received is a violation of 40 C.F.R. § 273.15(c)(1).

Accumulation of universal waste for longer than one year

43. The regulations at 40 C.F.R. §§ 273.15(a) and (b) state that a small quantity handler of universal waste may accumulate universal waste for no longer than one (1) year from the date the universal waste is generated, or received from another handler, unless such accumulation is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

44. At the time of the inspection, one universal waste container of spent HID lamps located in Building 9 maintenance area was observed with a May 27, 2014 start date.

45. Respondent's accumulation of the universal waste lamps described above for longer than one year is a violation of 40 C.F.R. § 273.15(a).

CONSENT AGREEMENT

46. 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.

47. 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.

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

49. 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.

50. 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.

51. 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.

52. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for the violations alleged in this Consent Agreement and Final

Order. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

53. Full payment of the penalty proposed in this CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

54. The effect of settlement described in Paragraph 52 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 55, below, of this Consent Agreement and Final Order.

55. Respondent certifies that by signing this Consent Agreement and Final Order that to the 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.

56. 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.

57. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of forty-eight thousand four hundred twenty-five dollars (\$48,425) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

58. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

59. 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 above.

60. 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).

61. 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.

Effective Date

62. 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

63. 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 Fifty-Seven Thousand Three Hundred Ninety-One Dollars (\$57,391) 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.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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 Sections 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 thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of forty-eight thousand four hundred twenty-five dollars (\$48,425).

2. Payment of the penalty shall be made by cashier's 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's 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
Combined Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

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, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 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. Respondent shall submit a Quarterly Compliance Report to EPA, in accordance with Paragraph 7 below. The first submission is due within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. The subsequent four (4) submissions shall be submitted within ninety (90) days of the previous submission. The Quarterly Compliance Report shall include the following:

- a. A narrative description with supporting documentation, including photographs, to show all containers of solvent contaminated wipes are properly labeled and maintained pursuant to the Solvent-Contaminated Wipe Rule. 40 C.F.R. § 261.4(a)(26).
- b. A narrative description with supporting documentation, including photographs, that all universal waste containers are properly managed pursuant to 40 C.F.R. §§ 273.13, 273.14, and 273.15.
- c. Documentation verifying universal waste containers are timely and properly shipped off-site.

7. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph to the following address:

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

C. Parties Bound

8. 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:

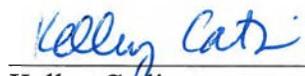
U.S. ENVIRONMENTAL PROTECTION AGENCY

20 Sep 2017
Date



Mary Goetz, Branch Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

9/19/17
Date



Kelley Catlin
Office of Regional Counsel

RESPONDENT:

BERTCH MANUFACTURING, INC.

9/19/17
Date


Signature

Gary Bertch
Printed Name

President
Title

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

Sept. 20, 2017
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

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 delivered to Attorney for Complainant:

Kelley Catlin (e-copy)

Copy delivered to the Respondent (first class mail):

Denny McGeough, Environmental Compliance Coordinator
Bertch Cabinet Manufacturing, Inc.
4747 Crestwood Drive
Waterloo, Iowa 50704

Copy delivered to the State of Iowa:

Amie Davidson, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources

9/20/17
Date


Regional Hearing Clerk