

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
2013 SEP 13 10:07:07

IN THE MATTER OF:)
)
William H. Harvey Co.)
)
4334 South 67th Street)
Omaha, Nebraska 68117)
)
RCRA I.D. No. NED003906716)
)
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-07-2013-0025

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and the William H. Harvey Company (WHHC 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).

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 William H. Harvey Co., a company incorporated under the laws of the state of Nebraska (Nebraska).

Statutory and Regulatory Framework

5. Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128, Chapters 4, 12 and 25. 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 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 Nebraska corporation authorized to conduct business in Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 4334 South 67th Street, Omaha, Nebraska, manufactures plumbing supplies and repackages plumbing supplies under the company name. WHHC employs approximately 300 people at this location, and began operations at this location in 1991.

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, D035), spent aerosol cans (D003), mercury thermometers (D009, U151), discarded chloroform (D001, D022), waste paint (D001, D005, D006, D007, D008 and D035). Universal waste generated by Respondent includes waste

fluorescent lamps and cathode ray tube computer monitors, which are classified as universal wastes pursuant to Neb. Admin. Code Title 128, Chapter 25.

10. 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. The paint wastes, solvent wastes and liquids drained from aerosol cans listed in Paragraph 9 are “solid wastes” and “hazardous wastes” within the meaning of these regulations.

11. On or about October 20 and 21, 2011, an EPA representative conducted a Compliance Evaluation Inspection at Respondent’s facility (hereinafter “the October 2011 inspection”).

12. Respondent’s initial hazardous waste notification on file with the Nebraska Department of Environmental Quality (NDEQ), dated July 23, 1991, stated that the facility was a “small quantity generator,” i.e., that the facility generated between 100 kilograms and 1,000 kilograms of hazardous waste per month. On May 27, 2009, Respondent updated its hazardous waste notification, identifying its facility as a “large quantity generator,” i.e., that the facility generates more than 1,000 kilograms per month. At the time of the October 2011 inspection, Respondent was operating as a large quantity generator.

13. At the time of the October 2011 inspection, Respondent had generated and had in storage at the facility the hazardous wastes and universal wastes listed in Paragraph 9.

14. During the October 2011 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. Neb. Admin. Code Title 128 Chapter 4.002 requires generators of solid waste to perform hazardous waste determinations using methods prescribed in the regulations.

17. At the time of the October 2011 inspection, Respondent was storing thirteen containers in its hazardous waste accumulation area as follows:

- a. One white five-gallon container labeled "UE Waste, Water Testing Supplies,"
- b. One yellow lab pack container dated 9/21/05 and labeled mercury thermometers, NMP, Blow Soy Bean Oil, Petroleum Ether, Chloroform, BYK-410, S60Z5, and Calight RDO,
- c. Six five-gallon containers of oil based and acrylic paints,
- d. Two one-gallon containers of paint: One was labeled "Yellow Paint Oil," and the other was labeled "Office Match,"
- e. One silver, one-gallon container labeled "Stove paint black," and
- f. Two one-quart containers of unknown and unlabeled waste.

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

19. Respondent's failure to characterize the wastes listed in Paragraphs 17 is a violation of Neb. Admin. Code Title 128, Chapter 4.

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

20. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statutes section 81-

1505(13) and Title 128, Chapter 12.001.01 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 or under Neb. Admin. Code Title 128 Chapters 2 and 3 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 one yellow lab pack of mercury containing thermometers and discarded chloroform marked with the accumulation start date of September 21, 2005.

22. Facilities classified as “large quantity generators” are allowed to store hazardous waste without a permit for up to 90 days pursuant to Neb.Admin. Code Title 128 Chapter 10.004.01, but storage of hazardous waste beyond 90 days constitutes operation of a hazardous waste storage facility without a permit.

23. Respondent’s storage of U151, D009, D001 and D022 hazardous waste for, at a minimum, more than six years at their facility constitutes operation of a hazardous waste storage facility without a permit.

B. Treatment of Hazardous Waste Without A Permit

24. At the time of the inspection, there were two open 30-gallon containers of solvent sitting in an open shed structure outside of the facility, and the contents were being allowed to evaporate.

25. Neb.Admin. Code Title 128 Chapter 1.130 defines “treatment” as “any method, technique, or process, including neutralization, designed to change the physical, chemical, or

biological character or composition of any hazardous waste so as to . . . render such waste . . . reduced in volume.”

26. Respondent’s evaporation of waste solvent constitutes treatment which reduces the waste in volume.

C. Failure to Comply with Generator Requirements

27. Large quantity generators of hazardous waste are allowed to store hazardous waste at their facility provided that they comply with various waste handling requirements. Neb. Admin. Code Title 128 Chapter 10.004.01A. 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

28. At the time of the October 2011 inspection, Respondent had 13 containers of hazardous waste in its hazardous waste accumulation area that were not labeled as hazardous waste, and 12 of the 13 containers were not marked with an accumulation start date as required by Neb. Admin. Code Title 128 Chapter 10.004.01F and G.

*2. Failure to label satellite accumulation containers
and failure to keep satellite accumulation containers closed*

29. At the time of the October 2011 inspection, Respondent had two open 30-gallon containers of spent solvent in a shed-type structure outside of the facility which Respondent identified as a satellite accumulation area. In addition, Respondent had two five-gallon satellite accumulation containers under two process lines that contained spent solvent. None of these containers were labeled in a manner that identified the contents of the container as required by

Neb. Admin. Code Title 128 Chapter 10.005.01A, which references Title 128 Chapter 10.004.01A2 (requiring closed containers) and Neb. Admin. Code Title 128 Chapter 10.005.01B (requiring containers to be labeled in such a manner as to identify the contents).

3. Failure to comply with contingency plan requirements

30. At the time of the October 2011 inspection, the facility contingency plan (which the facility referred to as the Emergency Response Plan) was deficient as follows:

- a. Title 128, Chapter 18.003.03 – Failure to describe within the contingency plan the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.
- b. Title 128, Ch. 18.003.04 – Failure to list the home and office telephone numbers and the home address for the emergency coordinator in the contingency plan.
- c. Title 128, Ch. 18.003.05 – Failure to list the locations and the capabilities of emergency equipment in the contingency plan.
- d. Title 128, Ch. 18.003.06 – Failure to describe the evacuation signal for fires or explosions in the Emergency Response Plan.
- e. Title 128, Ch. 18.003.06 – Failure to describe the evacuation and alternative evacuation routes within the Emergency Response Plan.
- f. Title 128, Ch. 18.004.02 – Failure to submit a copy of the Emergency Response Plan to the Nebraska Department of Environmental Quality.

4. Failure to provide hazardous waste training and to train employees on the contingency plan

31. Examination of documentation provided at the time of the October, 2011 inspection revealed that Respondent had failed to provide proper training to employees as follows:

- a. One employee who was responsible for handling hazardous waste apparently had no hazardous waste training at all in violation of Neb. Admin. Code Title 128, Chapter 19.001.01.

- b. One employee who was responsible for handling hazardous waste had not received training in 2009, and one employee who was responsible for handling hazardous waste only received training in 2010, in violation of Neb. Admin. Code Title 128, Chapter 19.001.01.
- c. None of the employees mentioned in Paragraphs 31.a and b. above had received training on the contingency plan as required by Neb. Admin. Code Title 128, Chapter 19.001.02.

32. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 27 through 31 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

33. The Nebraska rules governing the handling of universal waste are found at Neb. Admin. Code Title 128 Chapter 25. This rule allows less stringent handling of universal waste, which includes mercury-containing lamps, and cathode ray tube computer monitors, provided that handlers of these materials comply with the rules.

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

A. Universal Waste Lamps

1. Failure to label and keep closed universal waste containers

35. Neb. Admin. Code Title 128, Chapter 25.012.04A requires that containers of universal waste mercury containing lamps be closed while in storage.

36. Neb. Admin. Code Title 128, Chapter 25.013.05 requires that containers of universal waste mercury containing lamps be labeled while in storage.

37. At the time of the October 2011 inspection, there was one container of eight-foot

mercury containing fluorescent lamps and one container of four-foot lamps that were neither closed nor labeled in accordance with the applicable regulations, and one other container with a four-foot lamp in it that was closed but not labeled in accordance with the regulations.

2. Failure to label and keep closed containers of cathode ray tube computer monitors

38. Neb. Admin. Code Title 128, Chapter 25.012.05A requires that cathode ray tube computer monitors be placed in containers, and Neb. Admin. Code Title 128, Chapter 25.013.06 requires that the monitors be labeled in one of the methods set forth in the regulations.

39. At the time of the inspection, there was one cathode ray tube computer monitor that was not placed in a container and was not labeled in accordance with the regulations.

3. Failure to have a system in place to track universal waste

40. Neb. Admin. Code Title 128, Chapter 25.014.03 requires universal waste handlers to have a system in place to track the length of time the universal waste has been in storage at their facilities.

41. At the time of the inspection, Respondent did not have a system for tracking storage times for its universal waste.

42. The allegations set forth in Paragraphs 35 through 41 above demonstrate that Respondent violated Nebraska's universal waste rules.

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 its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the 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 \$65,887.00 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. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of Paragraphs 9 and 10 above shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

12. 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.

13. 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.

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

15. The effect of the settlement described in Paragraph 6 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in Paragraph 14 above.

16. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 6 of the Final Order portion of the CA/FO, that all requirements hereunder have been satisfied.

D. Reservation of Rights

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 mitigated civil penalty of \$65,887.00.

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:

U. S. 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.h. 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 seven (7) days of the effective date of this CA/FO, Respondent will provide documentation and/or a narrative demonstrating how WHHC performed the hazardous waste determinations on each of the 13 containers that were stored within the hazardous waste accumulation area that are referenced in Paragraph 17 in Section II (Allegations) above.
- b. Within fourteen (14) days of the effective date of this CA/FO, Respondent shall perform a hazardous waste determination on the liquid wastes generated at the aerosol can puncturing device, and provide documentation and/or a narrative demonstrating how the waste determination was done.
- c. Within fourteen (14) days of the effective date of this CA/FO, Respondent shall provide a copy of the November 3, 2011, analytical results from Midwest Laboratories on the dried solids that remained in the drums referenced in Paragraph 24 in Section II (Allegations) above.
- d. Within thirty (30) days of the effective date of this CA/FO, Respondent will provide a narrative describing how WHHC will ensure that all employees that manage hazardous waste will receive their annual hazardous waste training, and shall provide documentation of any training provided between the April, 2011 inspection and the effective date of this CA/FO.
- e. Within thirty (30) days of the effective date of this CA/FO, Respondent will provide documentation demonstrating that the facility's contingency plan has been updated to include:
 - i. Arrangements with the police;

- ii. All applicable information on the emergency equipment (location, descriptions, and capabilities); and
- iii. Documentation that the updated contingency plan was provided to all applicable local authorities and NDEQ.
- f. Ninety (90) days from the effective date of this CA/FO, and again one hundred eighty (180) days from the effective date of this CA/FO, Respondent will provide photographic documentation that demonstrates that the containers of hazardous waste in the less-than-90-day hazardous waste storage area are labeled and dated in accordance with applicable regulations.
- g. Within fourteen (14) days of the effective date of this CA/FO, Respondent will provide photographic documentation that they are managing their universal waste in compliance with the regulations.
- h. All submissions required pursuant to this Paragraph shall be sent to:

Deborah Bredehoft
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

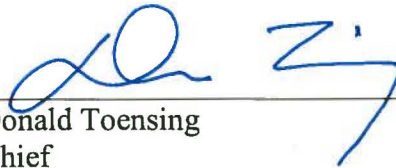
6. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

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COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-16-13

Date



Donald Toensing
Chief

Waste Enforcement and Materials Management Branch
Air and Waste Management Division

9-16-2013

Date



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

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For Respondent William H. Harvey Co.:

9/9/13
Date

By: 

Signature Treasurer

Neal R. Restivo
Printed Name

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IT IS SO ORDERED. This Final Order shall become effective immediately.

9-17-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF William H. Harvey Co., Respondent
Docket No. RCRA-07-2013-0025

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:

Andrew Johnson
Baker Hostetler
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, Ohio 44114-3482

Dated: 9/18/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7