

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

SEP 25 PM 2:57
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Harper Trucks, Inc.)
)
1522 S. Florence Street)
Wichita, Kansas 67209)
)
RCRA I.D. No. KSD007243702)
)
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-07-2007-0014

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Harper Trucks, Inc. (Harper 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 or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and Section 3007 of RCRA, 42 U.S.C. § 6927.

Parties

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

4. The Respondent is Harper Trucks, Inc. (Harper), a company incorporated under the laws of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R. 28-31”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State

In the matter of Harper Trucks, Inc.

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.

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 \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004.

Factual Background

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

8. Respondent, located at 1522 South Florence Street, Wichita, Sedgwick County, Kansas, manufactures hand trucks (dollies). Harper has been at this location since 1935, and employs approximately 150 people.

9. Respondent generates solid and hazardous waste as a result of its manufacturing operations. Specifically, Respondent generates and/or handles: spent parts washer solvent, spent partially filled aerosol paint cans, sludge pit waste, and spent fluorescent light bulbs.

10. Each of the wastes listed in paragraph 9 is a “solid waste” within the meaning of

In the matter of Harper Trucks, Inc.

K.A.R. 28-31-1(a)(2) and (3), which incorporate by reference 40 C.F.R. Parts 260 and 261.

Some of the wastes are also “hazardous waste” pursuant to those regulations.

11. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in paragraph 10. The waste codes for some of the wastes listed in paragraph 9 are D001, D018, D039, and D040.

12. Respondent filed a notification with the State of Kansas on January 1, 1980, stating that Harper was a non-generator of hazardous waste. A new notification was filed on June 20, 2007, indicating that the facility is a Kansas Small Quantity Generator.

13. At the time of the inspection discussed in paragraph 14 below, the EPA inspector determined that Respondent was generating at least 25 kg of hazardous waste per month, and that Respondent was therefore properly classified as a “Kansas Generator” pursuant to K.A.R. 28-31-2(d).

14. On November 9, 2004, an EPA representative conducted a Compliance Evaluation Inspection at the Harper facility (hereinafter “the November 2004 inspection”). At that time, the inspector noted several violations of RCRA.

Violations

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

I. Failure to Adequately Respond to an Information Request Pursuant to Section 3007 of RCRA

16. Section 3007 of RCRA, 42 U.S.C. Section 6927, requires any person who generates,

In the matter of Harper Trucks, Inc.

stores, treats, transports, disposes of or otherwise handles hazardous waste to furnish information relating to such wastes upon request of any officer, employee or representative of the Environmental Protection Agency.

17. At the time of the November 2004 inspection, the inspector left a Notice of Violation (NOV) at the facility. The NOV required Harper to submit a response within fourteen days of receipt of the NOV.

18. Harper sent a response to the NOV the same day as the day of the inspection (November 9, 2004). However, the response was incomplete in that it failed to include information on whether the facility had performed a hazardous waste determination on the paint stripper containing methylene chloride which was observed at the facility during the inspection and it failed to include information on its handling of waste fluorescent bulbs. On January 26, 2005, the EPA sent Harper a Letter of Warning (LOW) and Request for Information pursuant to Section 3007 of RCRA, 42 U.S.C. Section 6927, asking for information on whether wastes generated by the facility were hazardous, whether any hazardous wastes were handled in accordance with the regulations, and whether the facility was properly reporting its hazardous waste generation rate to the State of Kansas. The LOW/Request for Information stated that the deadline for responding to the LOW/Request for Information was February 25, 2005.

19. On February 17, 2005, a facility representative contacted Ms. Deborah Finger of EPA to ask questions about the January 26, 2005 LOW/Request for Information. On March 2, 2005, EPA received an incomplete response to the January 26, 2005 LOW/Request for Information in that only three of the seven questions contained in the Request for Information were addressed in

In the matter of Harper Trucks, Inc.

Harper's response. Harper's response stated that a further response would be sent to EPA by March 15, 2005.

20. On May 17, 2005, Ms. Finger called Harper to request the missing information due pursuant to the January 26, 2005 Request for Information. During that phone conversation, Harper told Ms. Finger that Harper would send the information to EPA by May 19, 2005.

21. On July 11, 2005, EPA received some of the information responsive to the remainder of the questions in the January 26, 2005 Request for Information. On August 25, 2005, Ms. Finger called Harper to request the remaining information. Harper sent a response dated September 21, 2005, but the response contained merely a document that Harper had previously provided to EPA, and not the information EPA had requested.

22. On June 9, 2006, Ms. Finger called Harper to request the information. Harper did not answer the telephone but Ms. Finger left a message telling Harper that additional information was needed to respond to the Request for Information, and requested that Harper provide the information within two weeks of the telephone message. Ms. Finger also asked Harper to return the call to confirm that the message had been received. No response was received in response to the message. Specifically, Ms. Finger had asked Harper to provide an explanation as to why Harper had submitted a hazardous waste manifest with incorrect waste codes for the one of the wastes shipped under that manifest. In addition, EPA was seeking information regarding Harper's handling of other hazardous wastes generated at the facility.

23. On July 25, 2006, EPA sent a second LOW/Request for Information specifically requesting the needed information. The letter was sent via certified mail and the return card

In the matter of Harper Trucks, Inc.

shows that Harper received the letter; however, Harper has never responded to EPA's July 25, 2006 letter.

24. Respondent's failure to respond to the numerous Requests for Information is a violation of Section 3007 of RCRA, 42 U.S.C. Section 6927.

II. Failure to Perform A Hazardous Waste Determination on Mercury-Containing

Florescent Lamps

25. K.A.R. 28-31-4(b) requires persons generating solid waste to determine if that waste is a hazardous waste.

26. At the time of the November 2004 inspection, the Facility had not performed a hazardous waste determination on its spent mercury-containing fluorescent lamps and was disposing of them in the general trash. Spent mercury-containing fluorescent lamps must either be handled as hazardous wastes bearing the waste code D009, or handled as universal waste.

27. Harper's failure to perform an adequate waste determination on the spent fluorescent lamps is a violation of K.A.R. 28-31-4(b).

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

In the matter of Harper Trucks, Inc.

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 proposed Final Order portion of the Consent Agreement and Final Order.

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. 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.

7. 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.

8. 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.

9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$17,729.75 as set forth in Paragraph 1 of the Final Order.

In the matter of Harper Trucks, Inc.

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 Consent Agreement and Final Order 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 11 of the Final Order, that all requirements hereunder have been satisfied.

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:

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 \$17,729.75.

2. Payment of the penalty shall be by electronic funds transfer and remitted to:

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

In the matter of Harper Trucks, Inc.

The Respondent shall reference the Docket Number on the check. Copies of the check shall also be mailed to:

Deborah Finger
U.S. EPA Region 7 AWMD/RESP
901 N. 5th Street
Kansas City, Kansas 66101

and to:

Regional Hearing Clerk
U.S. EPA Region 7 CNSL
901 N. 5th Street
Kansas City, Kansas 66101

3. 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. Parties Bound

4. This 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.

C. Reservation of Rights

5. 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

In the matter of Harper Trucks, Inc.

U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-two Thousand Five Hundred Dollars (\$32,500) 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.

6. 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.

7. 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.

8. 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.

9. 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.

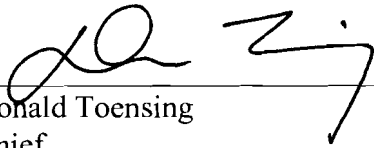
In the matter of Harper Trucks, Inc.

10. 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.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9-25-07

Date

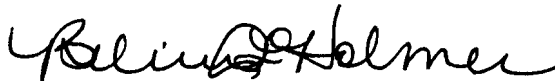


Donald Toensing
Chief

RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

9/25/07

Date

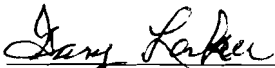


Belinda L. Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT HARPER TRUCKS, INC.:

9/19/07

Date



Gary Leiker

VP/CONTROLLED

Title

In the matter of Harper Trucks, Inc.

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

September 25, 2007
Date

Robert Patrick
Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Harper Trucks, Inc., Respondent
Docket No. RCRA-07-2007-0014

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:

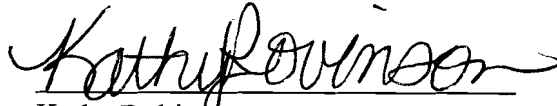
Copy hand delivered to
Attorney for Complainant:

Belinda L. Holmes
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Gary Leiker
P.O. Box 12330
Wichita, Kansas 67277-2330

Dated: 9/26/07


Kathy Robinson
Hearing Clerk, Region 7