



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SENT VIA E-MAIL

JUL 29 2019

REPLY TO THE ATTENTION OF

Mr. Daniel K. DeWitt
Partner
Warner Norcross and Judd, LLP
900 Fifth Third Center, 111 Lyon Street Northwest
Grand Rapids, Michigan 49503-2487
ddewitt@wnj.com

Re: Consent Agreement and Final Order
Haworth, Inc.
EPA RCRA ID Number: MID072595457
Docket Number: RCRA-05-2019-0013

Dear Mr. DeWitt:

Enclosed, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on July 29, 2019, with the Regional Hearing Clerk (RHC).

The Respondent must pay the civil penalty in the amount of \$8,600 within 30 days of the effective filing date of the CAFO in the manner prescribed in paragraphs 63-67 of the CAFO. All checks must reference the Respondent's site name and the CAFO docket number RCRA-05-2019-0013.

Thank you for your cooperation in resolving this matter. Should you have any questions regarding this matter, please contact me at 312-353-4796 or at whitnev.brenda@epa.gov.

Sincerely,

Brenda Whitney
Environmental Engineer, Compliance Section 2
Land and Chemicals Enforcement and Compliance Assurance Branch

Enclosure

cc: Alex Clark, MDEGLE (ClarkA37@michigan.gov) (w/ CAFO)
Lonnie Lee, MDEGLE (LeeL@michigan.gov) (w/ CAFO)
Jack Schinderle, MDEGLE (SchinderleJ@michigan.gov) (w/ CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

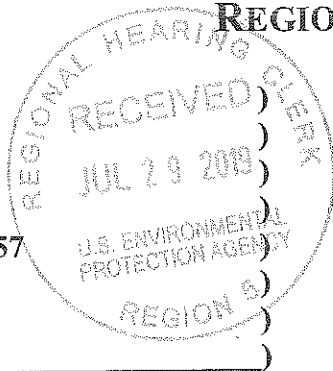
In the Matter of:

Haworth, Inc.
Holland, Michigan
EPA ID: MID072595457

Respondent.

Docket No. RCRA-05-2019-0013

Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Haworth, Inc., a corporation doing business in the State of Michigan.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the terms of this CAFO and to the assessment of the civil penalty specified in this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual or legal allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1989).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$37,131 per day for each violation of Subtitle C of RCRA that occurred between December 6, 2013 and August 1, 2016.

Factual Allegations and Alleged Violations

17. Respondent was and is a "person" as defined by MAC R 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is an "operator" or "owner," as those terms are defined under MAC R. 299.9106(f) and (g) and 40 C.F.R. § 260.10, of a facility located at 1 Haworth Center in Holland, Michigan (the facility).

19. At all times relevant to this CAFO, Respondent's facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

20. Respondent's facility is a "facility," as that term is defined under MAC R 299.9103(q), and 40 C.F.R. § 260.10.

21. At all times relevant to this CAFO, Respondent had not applied for a Hazardous Waste Management Facility Operating License ("Operating License") from the State of Michigan Department of Environmental Quality.

22. Respondent's operations consist in part of manufacturing adaptable workspaces, raised floors, movable walls, systems furniture, seating, storage, and wood-case goods.

23. Respondent generates spent solvents from laminating, color changing at the paint cell, and flushing paint lines with acetone.

24. At all times relevant to this CAFO, Respondent's spent solvents are "solid wastes" as that term is defined in MAC R 299.9202 and 40 C.F.R. § 261.2.

25. At all times relevant to this CAFO, Respondent's spent solvents are "hazardous wastes," as that term is defined in MAC R 299.9203 and 40 C.F.R. § 261.3, carrying the waste numbers from which they derived including all listings and characteristics.

26. Respondent stored, transported, disposed of, or otherwise handled its hazardous waste in "containers" as that term is defined under MAC R 299.9102(q) and 40 C.F.R. § 260.10.

27. At all times relevant to this CAFO, Respondent's holding of hazardous waste in containers constituted hazardous waste "storage," as that term is defined under MAC R 299.9107(dd) and 40 C.F.R. § 260.10.

28. Respondent is a "generator," as that term is defined under MAC R 299.9104(b) and

40 C.F.R. § 260.10.

29. Respondent generated and managed hazardous waste at the facility after November 19, 1980.

30. Respondent generated more than 1,000 kilograms of hazardous waste in any calendar month of 2011 and 2012.

31. Respondent notified as a large quantity generator on April 25, 2011 and April 23, 2012.

32. At a time between April 25, 2012, and October 31, 2013, Respondent lowered its hazardous waste generation rate to between 100 and 1,000 kilograms per month.

33. Respondent notified as a small quantity generator on October 31, 2013.

34. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Michigan regulations as part of the applicable state hazardous waste management program for the state of Michigan, or both.

35. On March 27, 2014, U.S. EPA conducted a Compliance Evaluation Inspection of the facility (the inspection).

36. On May 11, 2017, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

37. On June 9, 2017, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

38. On May 14, 2018, U.S. EPA issued to Respondent a Notice of Intent to File Civil Administrative Complaint.

39. On June 12, 2018, Respondent submitted to U.S. EPA a written response to the Notice of Intent.

Count I: Failure to Meet Conditions for a Storage License Exemption for Hazardous

Waste Generators under MAC R. 299.9306

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

41. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the storage of hazardous waste restricted from land disposal by any person in an unlicensed area is prohibited.

42. A generator of hazardous waste in Michigan may accumulate hazardous waste on-site in an unlicensed area for 180 days or less, provided that the generator complies with all applicable conditions set forth in MAC R 299.9306(1) – (3) and 40 C.F.R. § 262.34(a) - (c).

Failure to Label One Satellite Container of Hazardous Waste

43. A generator of hazardous waste in Michigan may accumulate hazardous waste on-site in containers without applying for an Operating License for storage of wastes generated at the facility and without complying with MAC R 299.9306(4), provided that the generator complies with all applicable conditions set forth in MAC R 299.9306(2).

44. Pursuant to MAC R 299.9306(2), a generator must ensure, among other things, that while hazardous waste is being accumulated in satellite containers on-site, each container is marked with the words “Hazardous Waste” and with either the waste’s chemical name or waste number.

45. At the time of the inspection, Respondent failed to properly mark one 14-gallon container of used rags contaminated with listed solvents, which had been determined to be hazardous wastes.

46. Respondent did not apply for an Operating License for storage of wastes generated

at the facility or comply with MAC R 299.9306(4).

47. The failure to comply with the conditions of MAC R 299.9306(2) subjects the generator of hazardous waste to the requirements of MAC parts 5, 6, and 7 and 40 C.F.R. parts 264, 265, 268, and 270.

48. Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of MAC parts 5, 6, and 7; 40 C.F.R. Part 265; and 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13.

Count II: Failure to Document All Waste Determinations

49. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

50. Pursuant to MAC R 299.9307, generators must keep records of any tests, waste analyses, or other determinations made pursuant to MAC R 299.9302 for not less than three years from the date that the waste was last sent for treatment, storage, or disposal.

51. At the time of the inspection, Respondent failed to provide records of waste determinations made for all solid wastes generated at the facility.

52. Respondent's failure to document all waste determinations violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and of the regulations at MAC R 299.9307.

Count III: Failure to Maintain Records of Personnel Training

53. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

54. Respondent notified as a large quantity generator of hazardous waste prior to October 31, 2013, therefore, Respondent was subject to the requirements of MAC R. 299.9306(1)(d); 40 CFR § 265.16(e).

55. Pursuant to MAC R. 299.9306(1)(d); 40 CFR § 265.16(e), training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

56. At the time of the inspection, Respondent failed to produce records for four employees who should have received hazardous waste training during the time period that Respondent was a large quantity generator.

57. Respondent's failure to maintain these records of personnel training violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at MAC R. 299.9306(1)(d); 40 CFR § 265.16(e)

Count IV: Failure to Maintain Records of Weekly Inspections

58. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

59. Respondent notified as a large quantity generator of hazardous waste prior to October 31, 2013, therefore, Respondent was subject to the requirements of MAC R. 299.9306(1)(a)(i); 40 CFR part 265, subpart I.

60. Pursuant to MAC R. 299.9306(1)(a)(i); weekly inspections conducted pursuant to 40 CFR § 265.174 must be documented, and records of the inspections are to be kept for a period not less than three years from the date of the inspection.

61. At the time of the inspection, Respondent failed to produce records documenting weekly inspections that were conducted from applicable time periods between March 27, 2011 and October 31, 2013.

62. Respondent's failure to maintain these records of weekly inspections of hazardous waste storage areas violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and regulations at MAC r. 299.9306(1)(a)(i).

Civil Penalty

63. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and considering U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003, Complainant determined that an appropriate civil penalty to settle this action is \$8,600. In determining the penalty amount, Complainant took into account the seriousness of the violations and Respondent's good faith efforts to comply with the applicable requirements. Respondent agrees to pay this civil penalty.

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,600 civil penalty for the RCRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

65. This civil penalty is not deductible for federal tax purposes.

66. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

67. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more

than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

68. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

69. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

70. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

71. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

72. The terms of this CAFO bind Respondent, its successors, and assigns.

73. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

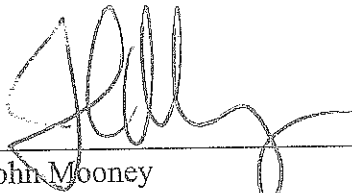
74. Each party agrees to bear its own costs and attorney's fees in this action.

75. This CAFO constitutes the entire agreement between the parties.

76. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and ddewitt@wnj.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

Haworth, Inc. - Respondent

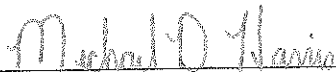
6/13/19
Date



John Mooney
Vice President, Global Finance, CFO

United States Environmental Protection Agency - Complainant

7/35/2019
Date




Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
Haworth, Inc.
Docket No. RCRA-05-2019-0013

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/26/19
Date


Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: **Haworth, Inc.**
EPA ID Number: **MID072595457**
Docket Number: **RCRA-05-2019-0013**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number **RCRA-05-2019-0013**, which was filed on July 29, 2019, in the following manner to the addressees:

Copy to Respondent by Certified U.S. Mail Return-Receipt Requested: Mr. Daniel K. DeWitt, Partner
Warner Norcross and Judd, LLP
900 Fifth Third Center, 111 Lyon Street, Northwest
Grand Rapids, Michigan 49503-2487

Copy by e-mail to Respondent: (Authorized in CAFO) Mr. Daniel K. DeWitt (Representative for Respondent)
ddewitt@wnj.com

Copy by e-mail to Attorney for Complainant: Andre Daugaveitis
daugavietis.andre@epa.gov

Copy by e-mail to Case Assignee: Brenda Whitney
whitney.brenda@epa.gov

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: July 29, 2019 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5