

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

In the Matter of:)
)
Delavan, Inc.) **Docket No. RCRA-07-2020-0128**
)
Respondent)
)
_____)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Delavan, Inc. (“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 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).

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, 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 EPA has reason to believe that Respondent violated Sections 3002, 3004, and 3005 of RCRA, 42 U.S.C §§ 6922, 6924 and 6925, the standards applicable to generators of hazardous waste (40 C.F.R. § 262), and land disposal restrictions (40 C.F.R. Part 268).

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

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

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 261, 262, 264, 265, 268 and 270.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3004 of RCRA, 42 U.S.C. § 6924, requires the Administrator to promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. These provisions include land disposal restrictions.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter

the environment or be emitted into the air or discharged into any waters, including ground waters.

13. The regulation at 40 C.F.R. § 261.2 defines the term “solid waste.”
14. The regulation at 40 C.F.R. § 261.3 defines the term “hazardous waste.”
15. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
16. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).
17. The regulation at 40 C.F.R. § 260.10 defines a “designated facility” as is a hazardous waste treatment, storage, or disposal facility which has a permit (or interim status) in accordance with the requirements of 40 C.F.R. Parts 270 and 124, has received a permit (or interim status) from a State authorized in accordance with 40 C.F.R. Part 271, or is regulated under 40 C.F.R. § 261.6(c)(2) or subpart F of part 266 and has been designated on the manifest by the generator pursuant to 40 C.F.R. § 262.20.
18. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the 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.
19. 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 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act 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 before November 2, 2015, and to \$75,867 for violations that occur after November 2, 2015, and are assessed after January 13, 2020. 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), 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

20. Respondent is a company 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).

21. On or about September 12, 2013, the EPA received a notification, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, that the facility located at 2200 Delavan Drive in West Des Moines, Iowa, is a Small Quantity Generator (SQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. Three owners were listed in the notification: Goodrich Corporation, United Technologies Corporation, and Delavan Incorporated.

22. Respondent has been assigned the following EPA ID Number for this facility: IAD981729866.

23. At all times relevant to this CAFO, Respondent's facility was located at 2200 Delavan Drive in West Des Moines, Iowa. The facility is voluntarily enrolled in the Iowa Department of Natural Resources Land Recycling Program due to a documented chlorinated solvent groundwater plume.

24. From September 23 through September 24, 2019, Respondent conducted an excavation of the presumed source area at the facility and disposed of approximately 457.87 tons of soil remediation waste from the facility at the Metro Park East Landfill as non-hazardous waste.

25. Approximately 457.87 tons of soil remediation waste were transported from the facility to the Metro Park East Landfill.

26. A hazardous waste determination was completed on the remediation waste generated at the facility, but Respondent failed to wait for the results of the samples before sending the soil remediation waste to the Metro Park East Landfill.

27. Upon receipt, the Metro Park East Landfill land-disposed the soil remediation waste from the facility.

28. The Metro Park East Landfill is a subtitle D landfill and is not permitted to receive hazardous waste pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

29. The toxicity characteristic leaching procedure was completed on the soil remediation waste. The results were received by Respondent on October 2, 2019, or after the soil remediation waste was land-disposed at the Metro Park East Landfill.

30. The results revealed some of the soil remediation waste contained perchloroethylene ("PCE") at a concentration of 1.16 mg/L which exceeds the characteristic level of 0.7 mg/L for PCE. Some of the soil remediation waste (hereinafter "hazardous soil remediation waste") is a hazardous waste pursuant to 40 C.F.R. § 261.3.

31. The laboratory that performed the initial sampling confirmed some of the soil remediation waste was hazardous on or about October 7, 2019.

32. On or about October 7, 2019, Respondent self-reported to the EPA, the Iowa Department of Natural Resources, and Metro Park East Landfill regarding the disposal of the hazardous soil remediation waste, including the information in Paragraphs 24 through 32 above.

33. A hazardous waste manifest did not accompany the hazardous soil remediation waste when transported to and disposed at the Metro Park East Landfill.

34. A land disposal restriction was not prepared for the hazardous soil remediation waste.

35. Respondent's excavation and generation of hazardous soil remediation waste resulted in Respondent becoming an LQG.

Violations

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

Count 1

Failure to Ship Hazardous Waste to a Permitted Treatment, Storage, and/or Disposal Facility

37. Complainant hereby incorporates the allegations contained in Paragraphs 20 through 35 above, as if fully set forth herein.

38. Pursuant to 40 C.F.R. § 262.10(a)(3), a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in § 260.10 of this chapter, or not otherwise authorized to receive the generator's hazardous waste.

39. Pursuant to 40 C.F.R. § 262.18(c), a generator must not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number and the required permit or interim status necessary to receive and manage the generator's waste.

40. At all times relevant to this CAFO, the Metro Park East landfill was not a designated facility as that term is defined and did not have a permit or interim status pursuant to 40 C.F.R. § 270 that would qualify or allow it to treat, store, and/or dispose of hazardous waste.

41. On or about September 23 and 24, 2019, Respondent shipped hazardous soil remediation waste to Metro Park East Landfill, where the landfill land-disposed of the hazardous waste into one of its cells.

42. Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. §§ 262.10(a)(3) and 262.18(c) by sending its hazardous soil remediation waste to a facility that was not and is not permitted to treat, store and/or dispose of hazardous waste.

Count 2

Failure to Prepare a Hazardous Waste Manifest

43. Complainant hereby incorporates the allegations contained in Paragraphs 20 through 35 above, as if fully set forth herein.

44. Pursuant to 40 C.F.R. § 262.20(a)(1), a generator that transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest on EPA form 8700-22, and if necessary, EPA Form 8700-22A.

45. At the time of the generation and transportation of approximately 200 and 250 tons of the hazardous soil remediation waste, Respondent had not prepared hazardous waste manifests.

46. Respondent's failure to prepare a hazardous waste manifest is a violation of Section 3002 of RCRA, 42 U.S.C. § 6922 and 40 C.F.R. § 262.20(a)(1).

Count 3

Failure to Perform Land Disposal Determination and Notification

47. Complainant hereby incorporates the allegations contained in Paragraphs 20 through 35 above, as if fully set forth herein.

48. Pursuant to Section 3004 of RCRA, 42 U.S.C. § 6924, the EPA promulgated land disposal restriction regulations as set forth at 40 C.F.R. § 268.

49. Pursuant to 40 C.F.R. § 262.17(a)(9), a large quantity generator must comply with all the applicable requirements under 40 C.F.R. Part 268.

50. Pursuant to 40 C.F.R. § 268.7(a)(1), a generator of hazardous waste must determine if the waste must be treated before it can be land disposed.

51. At the time of the disposal of hazardous soil remediation waste at the Metro Park Solid Waste Landfill, Respondent had not yet determined if the waste was required to be treated before it was land disposed.

52. Respondent's failure to determine if the hazardous soil remediation waste should be treated before it was land disposed is a violation of Section 3004 of RCRA, 42 U.S.C. § 6924 and 40 C.F.R. § 268.7.

CONSENT AGREEMENT

53. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

54. 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 specified herein.

55. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

56. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

57. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following email address: David.Platt@utc.com and Annette.McNeely@utc.com.

Penalty Payment

58. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Six Thousand Five Hundred and Twelve Dollars (\$36,512), as set forth below.

59. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

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

60. A copy of the check or other information confirming payment shall simultaneously be e-mailed to the following:

Lisa Haugen, Regional Hearing Clerk
haugen.lisa@epa.gov; and

Kelley Catlin, Attorney
catlin.kelley@epa.gov.

61. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and 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. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

62. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

63. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

64. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

65. Full payment of the penalty proposed in this Consent Agreement 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 Consent Agreement and

Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

66. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions 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 Sixty Thousand Thirty-Nine Dollars (\$61,098) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

67. 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.

68. 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 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.

69. 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.

General Provisions

70. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

71. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the 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.

72. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

73. 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.

74. 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.

75. 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

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

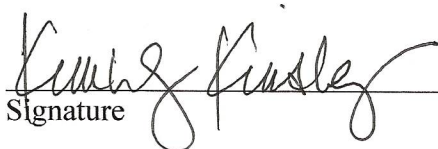
Kelley Catlin
Office of Regional Counsel

RESPONDENT:

Delavan, Inc.

4/27/2020

Date


Signature

Kimberly Kinsley

Printed Name

President of Delavan, Inc.

Title

FINAL ORDER

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date