

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

10 MAY 17 PM 1:44  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
Dethmers Manufacturing Company )  
4010 320<sup>th</sup> Street )  
Boyden, Iowa 51234 )  
)  
RCRA I.D. No. IAD007275753 )  
)  
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-07-2010-0023

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Dethmers Manufacturing Company (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). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

**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 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that EPA has reason to believe that Respondent violated 3005 of RCRA, 42 U.S.C. § 6925, and the implementing regulations at 40 C.F.R. Part 262 and 265.

### **Parties**

3. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7.

4. The Respondent is Dethmers Manufacturing Company (Respondent), a company 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 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 authorized for violations of Subchapter III of RCRA that occur between March 15, 2004 and January 12, 2009, and penalties of up to \$37,500 per day are authorized for violations that occur after January 12, 2009. Based upon the facts alleged in this CAFO 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), for the violations of RCRA alleged in this CAFO.

### **Factual Background**

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

8. Respondent, located at 4010 320<sup>th</sup> Street, Boyden, Iowa, manufactures agricultural field sprayers and vehicle towing trailers. Respondent employs approximately 290 full time employees at its Boyden, Iowa facility.

9. On or about May 2, 2008, Respondent notified EPA that it is a federal large quantity generator. Federal large quantity generators generate more than 1000 kilograms pounds of hazardous waste per month or more than 1 kilogram of acutely hazardous waste per month.

10. Respondent has been assigned the following EPA ID Number: IAD007275753.
11. As part of its operations, Respondent generates D001, D005, D006, D008, D039, D040, F002, F003, and F005 hazardous waste.
12. Respondent operates one less-than-90 day hazardous waste storage container area at the facility.
13. On or about May 11, 1999, an inspector for EPA conducted an inspection at Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Violation for, among other things, failure to mark containers in the hazardous waste storage area with an accumulation start date, failure to label a container in the hazardous waste storage container area with the words "Hazardous Waste", and failure to conduct weekly inspections in the hazardous waste storage area.
14. On or about April 6, 2004, an inspector for EPA conducted an inspection at Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Preliminary Findings for, among other things, failure to maintain adequate aisle space in the hazardous waste storage area.
15. On or about April 21, 2009, an inspector for EPA conducted an inspection (the April 2009 inspection) at Respondent's facility. Based on information obtained during the inspection, Respondent was issued a Notice of Preliminary Findings.

**Violation**

**OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT  
A RCRA PERMIT OR INTERIM STATUS**

16. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.
17. Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(b), require each person owning or operating a facility for the treatment, storage, or disposal of a hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.
18. The regulations at 40 C.F.R. § 262.34(a), allow a generator to accumulate hazardous waste in containers on-site for ninety (90) days without a permit or without interim status, provided the conditions listed in 40 C.F.R. §§ 262.34(a)(1)-(4) are met. These conditions include compliance with other hazardous waste regulatory requirements.

19. At the time of the April 2009 inspection, Respondent was not complying with various hazardous waste regulatory requirements, described below.

20. Respondent does not have a RCRA Permit or Interim Status to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C § 6925.

**Failure to Comply with Generator Requirements**

21. At the time of April 2009 inspection, Respondent was not complying with the following regulatory requirements:

*Accumulation Start Date*

22. The regulation at 40 C.F.R. § 262.34(a)(2), requires a generator to clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

23. At the time of the April 2009 inspection, the inspector observed that Respondent had failed to mark the accumulation start date on seven (7) 55-gallon storage containers of hazardous waste located in the paint kitchen hazardous waste storage area. The containers contained waste paint related material, paint and solvent.

24. Respondent's failure to date when the period of accumulation begins for each container of hazardous waste is a violation of 40 C.F.R. § 262.34(a)(2).

*Labeling and Marking  
Hazardous Waste Containers*

25. The regulation at 40 C.F.R. § 262.34(a)(3), requires a generator to clearly label or mark each container of hazardous waste with the words "Hazardous Waste."

26. At the time of the April 2009 inspection, the inspector observed that Respondent had failed to label or mark the words "Hazardous Waste" on seven (7) containers of hazardous waste located in the paint kitchen hazardous waste storage area. The containers contained waste paint related material, paint and solvent.

27. Respondent's failure to label or clearly mark the words "Hazardous Waste" on each container of hazardous waste is a violation of 40 C.F.R. § 262.34(a)(3).

*Closing Hazardous Waste Containers*

28. The regulations at 40 C.F.R. § 262.34(a)(1)(i), referencing 265.173(a), require that all containers holding hazardous must always be closed during storage, except when it is necessary to add or remove waste.

29. At the time of the April 2009 inspection, the inspector observed that Respondent failed to close one (1) 15-gallon container of hazardous waste located in the paint kitchen hazardous waste storage area. The container contained paint and solvent waste.

30. Respondent's failure to close a container of hazardous waste while in storage is a violation of 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(a).

*Adequate Aisle Space*

31. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.35, require that a generator maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

32. At the time of the April 2009 inspection, the inspector observed that Respondent failed to maintain adequate aisle space in the paint kitchen hazardous waste storage area.

33. Respondent's failure to maintain adequate aisle space in the hazardous waste storage area is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.35.

*Weekly Inspections*

34. The regulations at 40 C.F.R. § 262.34(c)(1)(i), referencing 265.174, require that a generator, at least weekly, inspect areas where hazardous waste containers are stored. The generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

35. At the time of the April 2009 inspection, the inspector discovered that Respondent was not performing weekly inspections in the hazardous waste storage area.

36. Respondent's failure to perform weekly inspections in the hazardous waste storage area is a violation of 40 C.F.R. §§ 262.34(c)(1)(i) and 265.174.

*Labeling Satellite Accumulation Containers*

37. The regulation at 40 C.F.R. § 262.34(c)(1)(ii) states that a generator may accumulate as much as 55-gallons of hazardous waste in satellite accumulation areas provided the generator marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the container.

38. At the time of the April 2009 inspection, the inspector observed four (4) 15-gallon hazardous waste satellite accumulation containers in the wet paint booth and one (1) 30-gallon

hazardous waste satellite accumulation container that were not marked "Hazardous Waste" or with other words identifying the contents of the containers.

39. Respondent's failure to label the satellite accumulation containers with the words "Hazardous Waste" or with other words identifying the contents of the containers is a violation of 40 C.F.R. § 262.34(c)(1)(ii).

*Annual Refresher of Hazardous Waste Training*

40. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.16(c), require that facility personnel must take part in an annual review of the initial RCRA training program.

41. At the time of the April 2009 inspection, the inspector discovered that annual refresher training for hazardous waste personnel was not being performed.

42. Respondent's failure to perform annual refresher training for hazardous waste personnel is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(c).

*Hazardous Waste Job Descriptions*

43. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.16(d)(2), require that a generator maintain a written job description for each position at the facility related to hazardous waste management including the requisite skill, education, or other qualifications.

44. At the time of the April 2009 inspection, the inspector discovered that the job descriptions did not include a description of duties related to hazardous waste management.

45. Respondent's failure to maintain adequate job descriptions is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(2).

*Training Descriptions*

46. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.16(d)(3), require that a generator maintain a written description of the type and amount of both introductory and continuing training that will be given to each person whose position at the facility is related to hazardous waste management.

47. At the time of the April 2009 inspection, the inspector discovered that descriptions of introductory and continuing training were not maintained.

48. Respondent's failure to maintain descriptions of introductory and continuing training for positions at the facility related to hazardous waste management is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(3).

*Maintaining Training Documentation*

49. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.16(d)(4) and 265.16(e), require that a generator maintain records that document that the training or job experience required under 40 C.F.R. 265.16(a), (b), and (c) has been given to, and completed by, facility personnel, and that training records on current personnel be kept until closure of the facility.

50. At the time of April 2009 inspection, the inspector discovered that documentation showing that training was given and completed by facility personnel were not maintained nor were training records on current personnel maintained.

51. Respondent's failure to maintain records documenting the training has been given and completed by facility personnel and failure to maintain training records on current personnel is a violation of 40 C.F.R. §§ 262.34(a)(4), 265.16(d)(4), and 265.16(e).

*Contingency Plan*

52. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.52(a), require that a generator have a contingency plan that describes the actions facility personnel must take to comply with 40 C.F.R. §§ 265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

53. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 265.52(d), require that the contingency plan list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.

54. At the time of the April 2009 inspection, the inspector discovered that Respondent's contingency plan did not describe actions necessary to respond to fires, explosions, or any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents.

55. At the time of the April 2009 inspection, the inspector observed that Respondent's contingency plan failed to include the home addresses of the emergency coordinators.

56. Respondent's failure to maintain a contingency plan with descriptions of actions necessary to respond to hazardous waste releases is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(a). Respondent's failure to maintain a contingency plan with the home addresses of the emergency coordinators is a violation of 40 C.F.R. §§ 262.34(a)(4) and 265.52(d).

**III. CONSENT AGREEMENT**

57. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

58. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO set forth below.
59. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.
60. 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 CAFO.
61. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
62. This CAFO 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.
63. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
64. Respondent certifies that by signing this CAFO that to 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.
65. The effect of settlement described in Paragraph 62 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 64, above, of this CAFO.
66. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
67. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty-Seven Thousand Nine Hundred Seventy-Three Dollars (\$27,973.00) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.
68. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 67 above.
69. 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 attorneys 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).

70. 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.

71. This CAFO 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.

72. 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 78 of the Consent Agreement, that all requirements hereunder have been satisfied.

#### **Reservation of Rights**

73. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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-Two Thousand Five Hundred Dollars (\$32,500.00) 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. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004, and January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are authorized.

74. 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 CAFO.

75. Except as expressly provided herein, nothing in this CAFO 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.

76. Notwithstanding any other provisions of the CAFO, 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.

77. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

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

#### **IV. 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 CAFO, IT IS HEREBY ORDERED THAT:

##### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a mitigated civil penalty of Twenty-Seven Thousand Nine Hundred Seventy-Three Dollars (\$27,973.00). The payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

The Respondent shall reference the Docket Number, RCRA-07-2010-0023 on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101; and

*In the matter of Dethmers Manufacturing Co.  
Docket No. RCRA-07-2010-0023*

Kelley Catlin  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO 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 CAFO 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 CAFO.

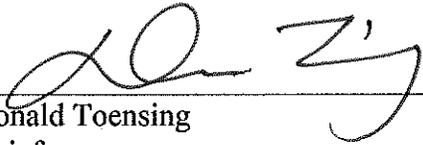
*In the matter of Dethmers Manufacturing Co.*  
*Docket No. RCRA-07-2010-0023*

**For the Complainant:**

The United States Environmental Protection Agency

5-10-10

Date

  
\_\_\_\_\_

Donald Toensing

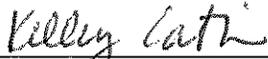
Chief

RCRA Waste Enforcement and Materials Management Branch

Air and Waste Management Division

5/10/10

Date

  
\_\_\_\_\_

Kelley Catlin

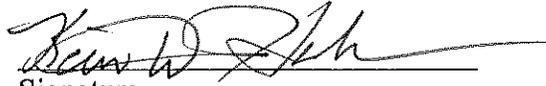
Assistant Regional Counsel

Office of Regional Counsel

In the matter of Dethmers Manufacturing Co.  
Docket No. RCRA-07-2010-0023

**For Respondent:**  
Dethmers Manufacturing Co.

May 6, 2010  
Date

  
Signature

Kevin Ten Haken  
Printed Name

Exec V.P.  
Title

*In the matter of Dethmers Manufacturing Co.  
Docket No. RCRA-07-2010-0023*

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

*May 17, 2010*  
Date

  
Robert Patrick  
Regional Judicial Officer

IN THE MATTER OF Dethmers Manufacturing Company, Respondent  
Docket No. RCRA-07-2010-0023

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:

Kelley Catlin  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David Cain  
Vice President of Operations  
Dethmers Manufacturing Company  
4010 320<sup>th</sup> Street  
Boyden, Iowa 51234

Dated: 5/17/10



Kathy Robinson  
Hearing Clerk, Region 7