

**U.S. EPA REGION 7  
HEARING CLERK**

3. Respondent is Elster American Meter Company, LLC, a company authorized to operate under the laws of Nebraska.

### **Statutory and Regulatory Framework**

4. 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.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3002, 3004, 3005, of RCRA, 42 U.S.C. §§ 6912, 6922, 6924, 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. Part 239 through Part 282.

6. Section 2002 of RCRA, 42 U.S.C. § 6912, authorizes the Administrator to prescribe such regulations as are necessary to carry out his functions under RCRA.

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.

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 “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 neutralize such waste, or so

as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. 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 constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. “Solid waste” is defined at 40 C.F.R. § 261.2.

16. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

17. 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.

18. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

19. 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).

20. The State of 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 the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management (hereinafter “128 N.A.C.”). 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 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. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

21. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. 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 \$121,275 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. 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), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), 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**

22. Respondent is a company and authorized to conduct business within the State of Nebraska. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

23. Respondent owns and operates a facility located at 2221 Industrial Road, Nebraska City, Nebraska (“facility”). This facility manufactures residential and commercial gas meters and regulators. Respondent employs approximately 586 people at this facility.

24. On or about July 26-27, 2023, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and a generator of used oil.

25. On or about March 12, 1990, Respondent notified to EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, of its regulated waste activity as a Large Quantity Generator (LQG) and obtained the following RCRA ID number: NED007265077.

26. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. §§ 261.2 and 261.3:

- a. Seven white 55-gallon drums of industrial shellac hazardous waste;
- b. Two 55-gallon drums of aerosol cans and solvent contaminated rags;
- c. Three 5-gallon containers accumulating a used paint and spent solvent mixture; and
- d. Excess adhesive from Line 4 of the diaphragm production area accumulated in a drip tray.

### **Violations**

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

#### **Count 1**

##### **Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status**

28. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 26 above, as if fully set forth herein.

29. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statute 81-1505(13), and the regulations at 40 C.F.R. Part 270 and 128 N.A.C. ch. 12 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

30. At the time of the inspection, Respondent did not have a permit or interim status.

#### **Generator Requirements**

31. The regulations at 128 N.A.C. ch. 10 § 004,01 state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 128 N.A.C. ch. 10 § 004,01 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

*Failure to label central accumulation area ("CAA") containers as "Hazardous Waste"*

32. The regulations at 128 N.A.C. ch. 10 § 004,01G state that a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that, inter alia, while being accumulated on site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste."

33. At the time of the inspection, Respondent failed to mark seven white 55-gallon drums of hazardous waste in the central container management area as "Hazardous Waste."

*Failure to accumulate hazardous waste at or near the point of generation*

34. The regulations at 128 N.A.C. ch. 10 § 005,01 state that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the

process generating the waste, without a permit or interim status and without complying with Section 004.01 of this Chapter.

35. At the time of the inspection, Respondent was using two 55-gallon drums, one for each of two hazardous waste streams, to accumulate in one location hazardous waste generated throughout the entire facility.

*Failure to identify evacuation routes in Contingency Plan*

36. The regulations at 128 N.A.C. ch. 18 § 003,06 require that a contingency plan must include, inter alia, an evacuation plan for personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where primary routes could be blocked by releases of hazardous waste or fires).

37. At the time of the inspection, the Contingency Plan for Respondent's facility failed to include evacuation routes to coordinate emergency services.

*Failure to submit a copy of Contingency Plan to local agencies*

38. The regulations at 128 N.A.C. ch. 18 § 004,02 require that a copy of the contingency plan and all revisions to the plan must be Submitted to the Director, the State Fire Marshal (for new construction only), all local police and/or fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services.

39. At the time of the inspection, the facility had not submitted a copy of its most recent Contingency Plan to any of the required agencies listed in 128 N.A.C. ch. 18 § 004,02. Specifically, the contingency plan had most recently been updated in May 2023, but the version held by local authorities was from June 2021.

*Satellite Accumulation*

40. The regulations at 128 N.A.C. ch. 10 § 005,01A state that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Section 004,01 of this Chapter provided the generator, inter alia, complies with Sections 004,01A1 and 004,01A2. of this Chapter and Chapter 16, 002,01C. This type of accumulation is known as "satellite accumulation." At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

*Failure to close satellite accumulation area ("SAA") containers*

41. The regulations at 128 N.A.C. ch. 10 § 004,01A2 state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having

interim status, provided that, inter alia, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

42. At the time of the inspection, the following SAA containers containing hazardous waste were open: three 5-gallon containers inside a paint booth accumulating a used paint and spent solvent mixture.

*Failure to label SAA containers*

43. The regulations 128 N.A.C. ch. 10 § 005,01B state that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Section 004.01 of this Chapter provided the generator, inter alia, marks the containers with the words "Hazardous Waste" or with other words that identify the contents of the containers.

44. At the time of the inspection, the following SAA containers containing hazardous waste were not labeled with the words "Hazardous Waste" or other words that identify the contents of the container: three 5-gallon containers inside a paint booth accumulating a used paint and spent solvent mixture.

*Failure to minimize risk of fire, explosion, or unplanned release*

45. The regulations at 128 N.A.C. ch. 17 § 002 require that generator sites must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

46. At the time of the inspection, Respondent allowed excess adhesive from Line 4 of the diaphragm production area to being accumulated in a drip tray, which is not a manner that would preventing the excess adhesive hazardous waste from spilling onto the floor and being released.

47. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 29 through 46 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

**CONSENT AGREEMENT**

48. 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.

49. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

50. 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.

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

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

53. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *travis.maness@honeywell.com*.

### **Penalty Payment**

54. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Two Thousand, Four-Hundred and Ninety-Five Dollars (\$32,495) as set forth below.

55. 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 979078



St. Louis, Missouri 63197-9000

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

56. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk  
*R7\_Hearing\_Clerk\_Filings@epa.gov*; and

Katherine Kacsur, Attorney  
*kacsur.katherine@epa.gov*.

57. 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**

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

59. 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.

60. 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.

61. 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.

62. 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 Seventy-Three Thousand Forty-Five Dollars (\$73,045) 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.

63. 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.

64. 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.

65. 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**

66. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

67. 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.

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

69. 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.

70. 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.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Date

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Katherine Kacsur  
Office of Regional Counsel

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Date

RESPONDENT:

Elster American Meter Company, LLC

*Brian Hunt*

Signature

*12/5/24*

Date

*Brian Hunt*

Printed Name

*Plant Director*

Title

**FINAL ORDER**

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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.

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Karina Borromeo  
Regional Judicial Officer

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Date

### **CERTIFICATE OF SERVICE**

I certify that 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 via Email to Complainant:

Katherine Kacsur  
Office of Regional Counsel  
*kacsur.katherine@epa.gov*

Ed Buckner  
Enforcement and Compliance Assurance Division  
*buckner.edwin@epa.gov*

Milady Peters  
Office of Regional Counsel  
*Peters.Milady@epa.gov*

Copy via Email to Respondent:

Travis Maness  
Environment, Health, and Safety Manager, Honeywell  
Elster American Meter Company, LLC  
Part of Honeywell  
2221 Industrial Road  
Nebraska City, Nebraska 68410  
*travis.maness@honeywell.com*

Copy via Email to the State of Nebraska:

Nebraska Electronic Docket (e-copy)  
*ndeq.epainspections@nebraska.gov*

David Haldeman, Administrator (e-copy)  
Waste Management Division  
Nebraska Department of Environment and Energy  
*david.haldeman@nebraska.gov*

Jeff Edwards (e-copy)  
Nebraska Department of Environment and Energy  
*jeffery.edwards@nebraska.gov*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Signed