

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

NOV 27 2011 10:05
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
National Cooperative Refinery Association)
)
1391 Iron Horse Road)
McPherson, Kansas 67460)
)
RCRA I.D. No. KSD007145956)
)
Respondent.)
)
Proceeding under Sections 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-07-2011-0027

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and the National Cooperative Refinery Association (NCRA or Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), Title 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Section I

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 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent violated the Kansas Solid Waste Management Act, Kan. Stat. Ann § 65-3401 et. seq., and the implementing regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter K.A.R. 28-31), and section 3005 of RCRA, 42 U.S.C. § 6925, and the implementing regulations at 40 C.F.R. Part 262 and 265.

Section II

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of the EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of the EPA.

4. The Respondent is National Cooperative Refinery Association (NCRA), a business registered and licensed to do business in the state of Kansas.

Statutory and Regulatory Framework

5. The state of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The state of Kansas has adopted by reference the federal regulations cited herein at pertinent parts in Agency 28, Article 31 of the Kansas Administrative Regulations. 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, 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 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, the EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The state of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though 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 now authorized.

Factual Background

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

8. Respondent, located at 1391 Iron Horse Road in McPherson, KS (the Facility), is a producer of motor fuels through petroleum refining operations. Respondent employs approximately 400 people.

9. As part of its operations, Respondent generates waste, including waste refinery sludge generated from refining operations (F037), waste cadmium- and lead- contaminated rags (D006 and D008), waste paint and spent solvents (D001, F003, and F005), spent fiberglass resin, waste chloroform (U044), and spent formic acid (U123). Respondent also generates used oil and universal waste.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at K.A.R. 28-31-261, which incorporate by reference the regulations at 40 C.F.R. Part 261. Each of the wastes listed in paragraph 9 is a “solid waste” and all of the wastes except the used oil and universal waste are also “hazardous wastes” within the meaning of these regulations.

11. On or about February 17, 2009, Respondent notified the Kansas Department of Health and Environment (KDHE) stating that the facility is an “EPA Generator” of hazardous waste pursuant to K.A.R. 28-31-2(c), (a Large Quantity Generator (LQG) of hazardous waste under federal regulations) by both monthly generation (over 1000 kg) and accumulation.

12. Respondent has been assigned a RCRA facility identification number of KSD007145956.

13. On or about March 17 through March 18, 2009, an EPA representative conducted a Compliance Evaluation Inspection at Respondent’s facility (hereinafter the March 2009 inspection). Based on a review of the inspection report and the information provided during the inspection by facility personnel, Respondent was issued a Notice of Violation.

Violations

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

COUNT 1

FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION

15. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

16. The regulations at 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b), require that a person who generates a solid waste must determine if that solid waste is a hazardous waste.

17. At the time of the March 2009 inspection, Respondent had failed to conduct a hazardous waste determination on the contents of a 55-gallon drum containing waste fiberglass resin located behind the paint shed near the perimeter fence, and the contents of waste aerosol spray cans stored in a cardboard box located in the Safety Building.

18. Respondent's failure to conduct a hazardous waste determination on the above-referenced waste streams is a violation of the regulations at 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b).

COUNT 2

FAILURE TO OBTAIN A RCRA TREATMENT, STORAGE OR DISPOSAL FACILITY PERMIT OR INTERIM STATUS

19. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

20. Section 3005 of RCRA, 42 U.S.C. § 6925, and Kan. Stat. Ann. 65-3437 state that operation of a hazardous waste treatment, storage or disposal facility without a permit is prohibited.

21. 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, and Kan. Stat. Ann. 65-3437.

Failure to Comply with Generator Requirements

22. The regulations at 40 C.F.R. § 262.34(a)(1)(i) and (a)(2)-(3) and K.A.R. 28-31-4(g), allow an EPA generator to accumulate hazardous waste in containers on-site for ninety days without a permit or without interim status, provided certain conditions are met. These conditions include compliance with other hazardous waste regulatory requirements. At the time

of the March 2009 inspection, Respondent was not complying with the following regulatory requirements:

Failure to Close, Date, and/or Label Storage Containers

23. The regulations at 40 C.F.R. §§ 262.34(a)(1)(i), 262.34(a)(2)-(3), and 265.173(a), and K.A.R. 28-31-4(g)(1)(A) and 28-31-4(g)(2),(3) state that generators, during the entire time hazardous waste is accumulated in storage on-site, shall mark his containers located in storage areas with the words "Hazardous Waste," clearly mark and make visible for inspection the date in which each period of accumulation begins on each container, and keep hazardous waste containers closed except when it is necessary to add or remove wastes.

24. At the time of the March 2009 inspection, Respondent had failed to close, date, and label or mark the words "Hazardous Waste" on a five-gallon container of F037 listed hazardous waste located in the West Slab hazardous waste storage area.

25. Respondent's failure to close, date, label or clearly mark the words "Hazardous Waste" on the container is a violation of 40 C.F.R. §§ 262.34(a)(2)-(3) and 265.173(a), and of K.A.R. 28-31-4(g)(1)(A) and 28-31-4(g)(2),(3).

26. At the time of the March 2009 inspection, Respondent had failed to mark the accumulation start date on a 55-gallon drum of D006/D008 rags located in the FBD Maintenance Shop.

27. Respondent's failure to mark the accumulation date for the container of hazardous waste is a violation of 40 C.F.R. § 262.34(a)(2) and K.A.R. 28-31-4(g)(2).

Failure to Close, Date, and/or Label Satellite Accumulation Containers

28. The regulations at 40 C.F.R. §§ 262.34(c)(1)(ii) and 265.173(a), and K.A.R. 28-31-4(j)(1)(A),(B) state that a generator shall mark his containers located in satellite storage areas with the words "Hazardous Waste" and keep hazardous waste containers closed except when it is necessary to add or remove wastes.

29. At the time of the March 2009 inspection, Respondent had four satellite accumulation containers of paint waste that were not properly labeled. Two of the containers were not properly closed.

30. Respondent's failure to close, date, and/or label satellite accumulation containers is a violation of the regulations at 40 C.F.R. §§ 262.34(c)(1)(ii) and 265.173(a), and K.A.R. 28-31-4(j)(1)(A),(B).

Failure to Conduct or Document Weekly Hazardous Waste Inspections

31. The regulations at 40 C.F.R. § 265.174 and K.A.R. 28-31-4(g)(1)(A) and 28-31-4(k), state that an owner or operator must inspect areas where hazardous waste containers are stored on a weekly basis.

32. At the time of the March 2009 inspection, Respondent's hazardous waste inspection log did not document the time for the December 19, 2008 inspection.

33. Respondent's failure to date the inspection is a violation of 40 C.F.R. § 265.174 and K.A.R. 28-31-4(g)(1)(A) and 28-31-4(k)

COUNT 3

FAILURE TO MINIMIZE POSSIBILITY OF HAZARDOUS WASTE RELEASES

34. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

35. The regulations at 40 C.F.R. § 265.31 and K.A.R. 28-31-4(g)(4), state that a facility is required to maintain and operate its facility in a way 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.

36. At the time of the March 2009 inspection, the inspector observed three releases of F037 hazardous waste on the concrete ground inside the West Slab hazardous waste storage area.

37. Respondent's failure to maintain and operate a facility in a way to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the environment which could threaten human health or the environment is a violation of 40 C.F.R. § 265.31 and K.A.R. 28-31-265(a).

COUNT 4

FAILURE TO LABEL USED OIL CONTAINERS

38. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

39. The regulation at 40 C.F.R. § 279.22(c)(1) incorporated by reference at K.A.R. 28-31-16, states that generators of used oil must label or clearly mark used oil storage containers and aboveground tanks with the words "Used Oil."

40. At the time of the March 2009 inspection, the inspector observed four containers of used oil located in the Maintenance Shop that were not labeled with the words "Used Oil."

41. Respondent's failure to label or clearly mark the used oil storage containers with the words "Used Oil" is a violation of 40 C.F.R. § 279.22(c)(1) and K.A.R. 28-31-16.

COUNT 5

FAILURE TO COMPLY WITH UNIVERSAL WASTE REQUIREMENTS

42. The allegations stated in paragraphs 7 through 14 are realleged and incorporated as if fully set forth herein.

43. The regulation at K.A.R. 29-31-15 states that each owner or operator of a facility that manages universal waste shall comply with the requirements of 40 C.F.R. § 273, incorporated by reference at K.A.R. 28-31-1(a)(8).

44. At the time of the March 2009 inspection, Respondent was not complying with various universal waste regulatory requirements, described below.

Failure to Containerize Lamps and/or Close Containers of Lamps

45. The regulation at 40 C.F.R. § 273.13(d)(1) requires that a small quantity handler of universal must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

46. At the time of the March 2009 inspection, Respondent stored universal waste lamps in the Safety Building in open containers.

Respondent's failure to containerize the universal waste lamps in closed containers is a violation of 40 C.F.R. § 273.13(d)(1).

Failure to Label Containers of Waste Lamps, Batteries, and Mercury-Containing Equipment

47. The regulation at 40 C.F.R. § 273.14(a) requires a small quantity handler of universal waste to clearly label each universal waste battery or container in which the universal waste batteries are contained with one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

48. At the time of the March 2009 inspection, Respondent failed to properly label universal waste batteries stored in various locations at the facility.

49. Respondent's failure to properly label the universal waste batteries is a violation 40 C.F.R. § 273.14(a).

50. The regulation at 40 C.F.R. § 273.14(d)(1) requires a small quantity handler of universal waste to clearly label each universal waste mercury-containing equipment or container in which the universal waste mercury-containing equipment is contained with one of the following phrases: "Universal Waste—Mercury-Containing Equipment," or "Waste Mercury-Containing Equipment)," or "Used Used Mercury-Containing Equipment."

51. At the time of the March 2009 inspection, Respondent failed to properly label universal waste mercury-containing equipment stored in various locations at the facility.

52. Respondent's failure to properly label the universal waste mercury-containing equipment is a violation of 40 C.F.R. § 273.14(d)(1).

53. The regulation at 40 C.F.R. § 273.14(e) requires a small quantity handler of universal waste to clearly label each lamp, container, or package containing universal waste lamps with one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

54. At the time of the March 2009 inspection, Respondent failed to properly label universal waste lamps stored in various locations at the facility.

55. Respondent's failure to label the universal waste lamps is a violation of 40 C.F.R. § 273.14(e).

CONSENT AGREEMENT

56. Respondent and Complainant agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

57. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO set forth below.

58. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

59. 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 Final Order portion of the CA/FO.

60. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

61. This CA/FO 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.

62. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

63. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

64. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$51,300, as set forth in Paragraph 1 of the Final Order.

65. 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.

66. This CA/FO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

67. By signing this CA/FO, Respondent certifies 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.

68. The effect of settlement described in Paragraph 63 above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 69 of this CA/FO.

69. Notwithstanding any other provision of this CA/FO, the EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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 \$32,500 per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though 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 now authorized.

70. 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 CA/FO.

71. Except as expressly provided herein, nothing in this CA/FO 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.

72. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the 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.

73. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

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

75. This Final Order portion of this CA/FO shall apply to and be binding upon Complainant and 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 CA/FO.

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 CA/FO, IT IS HEREBY ORDERED THAT:

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of Fifty One Thousand Three Hundred Dollars (\$51,300). 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:

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

2. Wire transfers should be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

3. A copy of the payment documentation shall also be mailed to:

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

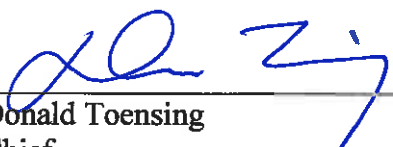
and to:

Sarah LaBoda, CNSL/CMBR
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

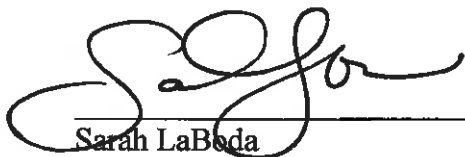
FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

7-12-11
Date



Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

7/12/11
Date



Sarah LaBoda
Senior Assistant Regional Counsel
Office of Regional Counsel

FOR RESPONDENT
NATIONAL COOPERATIVE REFINERY ASSOCIATION

7/11/11
Date


Richard K. Leicht
Signature

Richard K. Leicht
Printed Name

V.P. Refining
Title

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

July 27, 2011
Date



Robert Patrick
Regional Judicial Officer

IN THE MATTER OF National Cooperative Refinery Association, Respondent
Docket No. RCRA-07-2011-0027

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:

Sarah LaBoda
Senior Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard Leicht, Vice President
National Cooperative Refinery Association
2000 South Main Street
McPherson, Kansas 67460

Dated: 7/27/11


Kathy Robinson
Hearing Clerk, Region 7