

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

**In the Matter of:** )  
 )  
Diversified Services, Inc., )  
 )  
**Respondent** ) **Docket No. RCRA-07-2020-0127**  
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 )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Diversified Services, 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 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, Kansas Statutes Annotated 65-3431, and Kansas regulations which incorporate the standards applicable to generators of hazardous waste (40 C.F.R. § 262) by reference.

**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 Diversified Services, Inc., a corporation authorized to operate under the laws of Kansas.

### **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 and 3005 of RCRA, 42 U.S.C. §§ 6922 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. Part 262.

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 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.

9. 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.

10. 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).

11. 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.

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

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

14. 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.

15. 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).

16. 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, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. 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. In the case of a violation of 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 Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

17. 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**

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

19. Respondent owns and operates a facility located at 27 Clark Avenue, Wellington, Kansas (“facility”). Respondent offers metal coating and conversion, painting, pre-finish and finish processes on aluminum, steel and composites. Respondent employs approximately 28 people.

20. On or about February 27, 2002, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

21. On or about July 30, 2019, an EPA inspector 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 used oil generator.

22. 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. Chromium-contaminated paint and paint dust on the floor in an area about 8 feet by 8 feet near the aerosol can puncturing device, hydraulic can crushing equipment, and chromium paint-contaminated solid debris compactor and satellite accumulation area box. Chromium-contaminated paint dust is managed as D007 hazardous waste.
- b. Chromium contaminated paint dust on the floor in an area about 3 feet by 16 feet on the east side of paint booth 2. Chromium-contaminated paint dust is managed as D007 hazardous waste.
- c. Chromium-contaminated paint on the floor and walls in an area about 12 feet by 5 feet in the paint mixing area of the paint shop. Waste chromium paint is managed as D007 hazardous waste.

23. Respondent has been assigned the following EPA ID Number: KSD187314364.

#### **Violation**

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

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

25. Complainant hereby incorporates the allegations contained in Paragraphs 18 through 23 above, as if fully set forth herein.

26. Section 3005 of RCRA, 42 U.S.C. § 6925, Kansas Statutes Annotated 65-3431, and the regulations at K.A.R. 28-31-270 which incorporate by reference the regulations at 40 C.F.R. Part 270, 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.

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

### **Generator Requirements**

28. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(a), 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 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

#### *Failure to Store Hazardous Waste in a Container*

29. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(a)(1)(i), require that hazardous waste be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

30. At the time of the inspection, the inspector observed Respondent accumulating chromium-contaminated paint and paint dust, which are D007 hazardous wastes, on the floor in various locations at the facility. The chromium-contaminated paint and paint dust was not placed in a container that complied with Subpart I of 40 C.F.R. Part 265.

#### *Failure to maintain and operate a facility to minimize release of hazardous waste*

31. The regulations at K.A.R. 28-31-262, incorporating by reference 40 C.F.R. § 262.34(a)(4), require, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

32. Pursuant to 40 C.F.R. § 265.31, as found in 40 C.F.R. Part 265, Subpart C, facilities must be maintained and operated to minimize the possibility of a fire, explosions, 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.

33. At the time of the inspection, the facility was not being maintained or operated to minimize the release of chromium-contaminated paint and paint dust to air, soil, or surface water which could threaten human health or the environment. Specifically, chromium-contaminated paint and paint dust was observed at the paint shop covering an area measuring approximately 8-feet by 8-feet around the aerosol can puncturing device, hydraulic can crushing equipment, chromium paint-contaminated solid debris compactor, and satellite accumulation area box. Chromium-contaminated paint dust was also observed in an area measuring approximately 3-feet by 16-feet near paint booth 2.

34. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 29 through 33 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, and Kansas Statutes Annotated 65-3431.

**CONSENT AGREEMENT**

35. 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.

36. 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.

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

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

39. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following email address: [rbabst@metalfinishingco.com](mailto:rbabst@metalfinishingco.com).

**Penalty Payment**

40. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of eight thousand two hundred forty-seven dollars (\$8,247), as set forth below.

41. 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>.

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

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

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

43. 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**

44. 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.

45. 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.

46. 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.

47. 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.

48. 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-One Thousand Ninety-Eight 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.

49. 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.

50. 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.

51. 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**

52. 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.

53. 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.

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

55. 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.

56. 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

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

RESPONDENT:

Diversified Services, Inc.

4/6/2020  
Date

Robert H. Babst, Jr.  
Signature

Robert H. Babst, Jr.  
Printed Name

President  
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