

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5TH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
Alpha Galvanizing, Inc. )  
East Hwy 20 )  
Atkinson, Nebraska 68713 )  
)  
RCRA I.D. No. NER000501114 )  
)  
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-07-2007-0005

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Alpha Galvanizing, 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, 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).

**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 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 Environmental Protection Agency has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925.

### **Parties**

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air, RCRA, and Toxics Division of the EPA, Region 7, who has been duly delegated the authority to bring this action.

4. The Respondent is Alpha Galvanizing, Inc., a company incorporated under the laws of Nebraska.

### **Statutory and Regulatory Framework**

5. 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 Neb. Admin. Code”). 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).

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 \$27,500 per day are authorized for violations that occur after January 30, 1997 and penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. 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), 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 Consent Agreement and Final Order.

### **FACTUAL ALLEGATIONS**

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

8. Respondent, located at East Highway 20, Atkinson, Holt County, Nebraska, is a commercial galvanizer of metal products offering galvanizing services to its parent company and other steel manufacturers. Alpha Galvanizing employs approximately 35 people. Alpha Galvanizing has operated at this location since approximately 1996.

9. Respondent generates hazardous waste, as that term is defined in 40 C.F.R. §260.10, as a result of its galvanizing operations. Specifically, Respondent generates a sludge containing chromium. Respondent also generates spent aerosol cans.

10. Each of the wastes listed in paragraph 9 is a "solid waste" and also a "hazardous waste" within the meaning of 40 C.F.R. Parts 260 and 261, and Neb. Admin. Code, ch. 2 and 3.

11. Once a waste is classified a hazardous waste, it is assigned a waste code pursuant to the regulations set forth in paragraph 10. The waste codes for the wastes listed in paragraph 9 are D007 and D003.

12. On or about February 2, 2003, Respondent submitted a notification to the Nebraska Department of Environmental Quality (NDEQ) that it was operating as a Large Quantity Generator of hazardous waste. Large quantity generators generate 1,100 kg (2,200 pounds) or more of hazardous waste per month. This notification was updated on or about March 1, 2006. The March 2006 notification changed Respondent's generator status to a Small Quantity Generator of hazardous waste. Small quantity generators generate between 100 kg and 1,000 kg (220-2,200 lbs) of hazardous waste per month.

13. Respondent has been assigned the facility identification number NER000501114.

14. On or about February 28, 2006, an EPA representative conducted a Compliance Evaluation Inspection at the Respondent's facility (hereinafter "the February 2006 inspection").

### **VIOLATIONS**

#### **COUNT 1**

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

15. Complainant hereby incorporates the allegations contained in paragraphs 1 through 14 above, as if fully set forth herein.

**A. Treatment of Hazardous Waste without a RCRA Permit**

16. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a RCRA permit.

17. Pursuant to the Nebraska Administrative Code, a permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in Title 128 Nebraska Administrative Code Chapters 2 and 3. Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. 128 Neb. Admin. Code, ch.12 § 001.01.

18. On December 16, 2002 (hereinafter "the December 2002 inspection"), the NDEQ conducted a waste management evaluation to confirm Respondent's generator status and compliance with the Nebraska hazardous waste regulations. During the December 2002 inspection, NDEQ inspectors observed sludge spread in a metal pan. Respondent used a propane flame to dry or evaporate the excess liquid from the ARS sludge. The ARS sludge is a D007 hazardous waste.

19. At the time of the February 2006 inspection, Respondent was again engaging in the practice of spreading sludge from the Acid Recovery System (ARS) in a metal pan at the facility and using a propane flame to dry or evaporate the excess liquid from the ARS sludge.

20. By using heat to dry the ARS sludge and therefore evaporate excess liquid, Respondent was engaged in "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 262.10; 128 Neb. Admin. Code, ch. 12 § 001.01; and 128 Neb. Admin. Code, ch. 1 § 124.

21. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA and 128 Neb. Admin. Code, ch. 12 § 001.01.

22. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and 128 Neb. Admin. Code, ch. 12 § 001.01.

**B. Failure to Meet Generator Requirements**

23. Respondent, as a hazardous waste generator, may accumulate hazardous waste in containers on-site for one hundred and eighty (180) days without a permit or without having interim status, provided that certain conditions are met. Those conditions are listed in 40 C.F.R. § 262.34(d), as incorporated in Neb. Admin. Code, ch. 9 § 007.03.

24. At the time of the February 2006 inspection, Respondent was not complying with the

following regulatory requirements:

Failure to conduct weekly inspections of hazardous waste containers

25. The regulations found at 40 C.F.R. § 262.34(d)(2) and 128 Neb. Admin. Code, ch. 9 § 007.03C, require a generator comply with the requirement set forth at 40 C.F.R. § 265.174 and 128 Neb. Admin. Code, ch. 10 § 004.01A4, respectively. Pursuant to these regulations, hazardous waste container storage areas must be inspected, at least weekly, for leaks and for deterioration caused by corrosion and other factors.

26. At the time of the February 2006 inspection, Respondent's representatives stated that weekly inspections were not performed in hazardous waste storage areas.

Failure to Date Hazardous Waste Storage Containers

27. The regulations at 40 C.F.R. § 262.34(d)(4) and 128 Neb. Admin. Code, ch. 9 § 007.03D require that a generator comply with the requirement set forth at 40 C.F.R. § 262.34(a)(2) and 128 Neb. Admin. Code, ch. 10 § 004.01F, respectively. Pursuant to these regulations, a generator must clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

28. At the time of the February 2006 inspection, EPA identified three 55-gallon containers containing ARS sludge at the Respondent's facility. The ARS sludge is a D007 hazardous waste.

29. The hazardous waste containers were not clearly marked with the date upon which the accumulation began.

Failure to Label Hazardous Waste Storage Containers

30. The regulations at 40 C.F.R. § 262.34(d)(4) and 128 Neb. Admin. Code, ch. 9 § 007.03D require that a generator comply with the requirement set forth at 40 C.F.R. § 262.34(a)(3) and 128 Neb. Admin. Code, ch. 10 § 004.01G, respectively. Pursuant to these regulations, a generator must clearly mark each container of hazardous waste with the words "Hazardous Waste" while being accumulated on-site.

31. At the time of the February 2006 inspection, EPA identified three 55-gallon containers containing the ARS sludge at the Respondent's facility. The ARS sludge is a D007 hazardous waste.

32. The hazardous waste containers were not clearly marked with the words "Hazardous Waste".

Failure to Post Emergency Information

33. The regulations at 40 C.F.R. § 262.34(d)(5)(ii) and 128 Neb. Admin. Code, ch. 9 § 007.09 require that a generator post the following information by the telephone: A) the name and telephone number of the emergency coordinator; B) the location of fire extinguishers and spill control material, and if present, the fire alarm; and C) the telephone number of the fire department, unless the facility has a direct alarm.

34. At the time of the February 2006 inspection, the aforementioned emergency information was not posted next to the telephone.

Failure to Properly Train Employees

35. The regulations at 40 C.F.R. § 262.34(d)(5)(iii) and 128 Neb. Admin. Code, ch. 9 § 007.10 require that a generator ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

36. At the time of the February 2006 inspection, Respondent's representative indicated that no formal training on hazardous waste handling and emergency procedures was provided to employees.

37. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(d), which are alleged in paragraphs 25 through 36, subjects Respondent to the requirements of having a permit or interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, for on-site storage of hazardous waste.

38. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 128 Neb. Admin. Code, ch. 12 § 001.01.

**COUNT 2**

Failure to Conduct a Hazardous Waste Determination

39. Complainant hereby incorporates paragraphs 1 through 38 as if fully incorporated herein.

40. Pursuant to 40 C.F.R. § 262.11 and 128 Neb. Admin. Code, ch. 4 § 002, a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, and 128 Neb. Admin. Code, ch. 2 § 003, is required to determine if the solid waste is a hazardous waste.

41. At the time of the February 2006 inspection, Respondent had used and disposed of aerosol cans in the general trash. Respondent had not conducted a hazardous waste determination on the aerosol cans.

42. Respondent's failure to make a hazardous waste determination on the waste stream noted in paragraph 41 is a violation of 40 C.F.R. § 262.11 and 128 Neb. Admin. Code, ch. 4 § 002.

### **CONSENT AGREEMENT**

43. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

44. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order 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 Consent Agreement and Final Order set forth below.

45. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

46. 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 Consent Agreement and Final Order.

47. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

48. This Consent Agreement and Final Order 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.

49. 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.

50. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

51. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$12,426 as set forth in Paragraph 1 of the Final Order.

52. 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.

53. This Consent Agreement and Final Order 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.

54. This Consent Agreement and Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.

#### **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 Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

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

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of \$ 12, 426.

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

Regional Hearing Clerk  
U.S. EPA Region 7  
c/o Mellon Bank  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

The Respondent shall reference the Docket Number, RCRA-07-2007-0005, on the check. A copy of the check shall also be mailed to:



Kelley Hickman  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, KS 66101

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Compliance Actions**

4. Respondent shall immediately cease any illegal treatment of hazardous waste at the facility and shall provide documentation to EPA which demonstrates that Respondent is storing, labeling, and disposing of its hazardous waste in accordance with applicable Nebraska laws and regulations. Beginning on the effective date of the Final Order, and continuing for a period of one year, Respondent shall submit to EPA copies of all Hazardous Waste Manifest forms within thirty (30) days of each shipment of hazardous waste from the facility. Such documentation shall be sent to:

Larry Mullins, MES, C.H.M.M  
Environmental Scientist  
U.S. EPA Region 7, ARTD/RESP  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

#### **C. Parties Bound**

5. This Final Order portion of 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.

#### **D. Reservation of Rights**

6. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion 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 thirty-two thousand five hundred dollars (\$32,500) 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.

7. 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 Consent Agreement and Final Order.

8. 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.

9. 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 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.

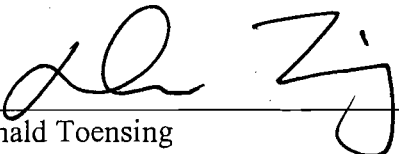
10. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

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

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY


4-17-07

Date

  
\_\_\_\_\_  
Donald Toensing  
Chief, RCRA Enforcement and State Programs Branch  
Air, RCRA, and Toxics Division  
U.S. Environmental Protection Agency  
Region 7

4/16/07

Date

  
\_\_\_\_\_  
Kelley L. Hickman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

For Respondent Alpha Galvanizing, Inc.

4-11-07  
Date

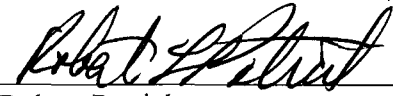
Signature Dan Olson

Dan Olson  
Printed Name

Sec/Treas  
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

*April 17, 2007*  
Date

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

IN THE MATTER OF Alpha Galvanizing, Inc., Respondent  
Docket No. RCRA-07-2007-0005

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

Copy by Certified Mail Return Receipt to:

Austin McKillip  
1900 U.S. Bank Building  
233 South 13th St.  
Lincoln, Nebraska 68508-2095

Dated: 4/17/07

  
Kathy Robinson  
Hearing Clerk, Region 7