



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 24 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7009 1680 0000 7663 5318
RETURN RECEIPT REQUESTED

Mr. David G. Susler
Associate General Counsel
National Materials, L.P.
1965 Pratt Boulevard
Elk Grove Village, Illinois 60007

Re: Consent Agreement and Final Order
National Galvanizing L.P.
Docket No: **RCRA-05-2013-0009**

Dear Mr. Susler:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on June 24, 2013, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$45,751 in the manner prescribed in paragraphs 50 and 51 of the CAFO, and reference your payment with the docket number **RCRA-05-2013-0009**. Your payment is due within 30 calendar days of the effective date of the CAFO. I have also enclosed for your consideration a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gary J. Victorine".

Gary J. Victorine
Chief
RCRA Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

National Galvanizing L.P.
Monroe, Michigan,

Respondent.

RECEIVED
JUN 24 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No. RCRA-05-2013-0009

Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is National Galvanizing L.P. (Respondent), a corporation doing business in the State of Michigan.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided by 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil, pursuant to Sections 3001 – 3007, 3013, and 3014 of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934, and 6935.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. *See* 51 Fed. Reg. 36804 (October 16, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009, and \$37,500 for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent was and is a "person" as defined by Mich. Admin. Code r. 299.9106(i), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is the "owner" or "operator," as those terms are defined under Mich. Admin. Code r. 299.9106(f) and (g), and 40 C.F.R. § 260.10, of a heavy gauge galvanizing

business in a 245,000 square foot facility located at 1500 Telb Road in Monroe, Michigan (Facility).

18. The Facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

19. At all times relevant to this CAFO, Respondent created "solid wastes" at the Facility, including chromic acid waste, spent pickle liquor, used oil, used fluorescent lamps and used batteries.

20. Respondent's processes at the Facility produce several "hazardous wastes" identified or listed in Mich. Admin. Code r. 299.9201-9230 [40 C.F.R. § 261.3], or cause a hazardous waste to become subject to regulation under Mich. Admin. Code r. 299.9101-299.11107 [40 C.F.R. Parts 260-270].

21. Respondent is a "generator," as that term is defined in Mich. Admin. Code r. 299.9104(a) [40 C.F.R. § 260.10].

22. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste at the Facility each calendar month of 2007, 2008, 2009, and 2010, and thus was a large quantity generator in 2007, 2008, 2009, and 2010.

23. The galvanizing line at the Facility generates D007 chromium bearing solid waste (the Chromium Waste).

24. At all times relevant to this CAFO, the Chromium Waste referenced in paragraph 23 above was a "hazardous waste" as that term is defined under Mich. Admin. Code r. 299.9201-9230 [40 C.F.R. § 261.3].

25. The galvanizing line at the Facility includes a 1,000 gallon "Chromic Acid Drop Tank."

26. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the analogous Michigan regulations as part of the applicable state hazardous waste management program for the State of Michigan, or both.

27. At all times relevant to this CAFO, the State of Michigan has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the Facility.

28. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the Facility.

29. On March 25, 2008, U.S. EPA conducted an inspection of the Facility (Inspection).

30. On November 4, 2009, U.S. EPA issued a Notice of Violation to National Galvanizing alleging certain violations of RCRA discovered during the Inspection.

Count 1

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as though set forth in this paragraph.

32. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

33. Pursuant to Mich. Admin. Code r. 299.9306 and 40 C.F.R. § 262.34(a), and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions of Mich. Admin. Code r. 299.9306 and 40 C.F.R. § 262.34(a).

34. If a facility fails to meet the conditions for a generator permit exemption for waste storage under Mich. Admin. Code r. 299.9306 and 40 C.F.R. § 262.34(a), then the generator must apply for an operating permit under Mich. Admin. Code r. 299.9502, 299.9508, 299.9510 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

35. Respondent accumulated onsite the Chromium Waste referenced in paragraphs 23-24 above for the following time periods:

- a. June 21, 2010 to June 22, 2010;
- b. February 25, 2009 to February 26, 2009;
- c. July 10, 2008 to July 11, 2008; and
- d. October 23, 2007 to October 24, 2007.

36. For the time periods referenced in paragraph 35, Respondent did not meet the conditions of Mich. Admin. Code r. 299.9306 [40 C.F.R. § 262.34] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste.

37. Respondent therefore stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at Mich. Admin. Code r. 299.9502, 299.9508, 299.9510 [40 C.F.R. Part 264, 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

Count 2

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as though set forth in this paragraph.

39. Facilities that fail to meet the conditions for a generator permit exemption for waste storage under Mich. Admin. Code r. 299.9306 and 40 C.F.R. § 262.34 must meet the standards for treatment, storage, and disposal facilities in Mich. Admin. Code r. 299.9601 *et seq.* [40 C.F.R. Section 264, Subpart J], which require that all owners or operators of hazardous waste

facilities comply with all requirements, including the facility personnel training provisions set forth at 40 C.F.R. § 264.16 (as incorporated by reference pursuant to Mich. Admin. Code r. 299.9605).

40. 40 C.F.R. § 264.16(c) requires that facility personnel take part in an annual review of the initial training required by 40 C.F.R. § 264.16(a) (as incorporated by reference pursuant to Mich. Admin. Code r. 299.9605).

41. The initial training required by 40 C.F.R. § 264.16(a) must be designed to ensure that the facility personnel are able to effectively respond to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

- a. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- b. Key parameters for automatic waste feed cut-off systems;
- c. Communications or alarm systems;
- d. Responses to fires and explosions;
- e. Response to ground-water contamination incidents; and
- f. Shutdown of operations.

42. During the records review portion of the Inspection, Respondent's personnel provided the inspectors with training records which showed that Respondent's annual review training entitled "Awareness Training" did not include information specific to the Facility such as emergency procedures, emergency equipment, emergency systems, and contingency plan implementation.

43. Respondent therefore conducted an annual review of the initial training requirement for employees of hazardous waste storage facilities that did not contain all of the required elements, in violation of 40 C.F.R. § 264.16(c) (as incorporated by reference pursuant to Mich. Admin. Code r. 299.9605).

Count 3

44. Complainant incorporates paragraphs 1 through 30 of this Complaint as though set forth fully in this paragraph.

45. Pursuant to Mich. Admin. Code r. 299.9810, used oil generators must comply with 40 C.F.R. § 279.22. Specifically, containers and aboveground tanks used to store used oil must be labeled or marked clearly with the words "Used Oil." See 40 C.F.R. § 279.22(c).

46. During the Inspection of the auxiliary room at the Facility, the inspectors observed containers and three totes used to accumulate used oil.

47. The containers and three totes contained "used oil," as that term is defined under Mich. Admin. Code r. 299.9109(p).

48. The containers and three totes containing used oil were not labeled with the words "Used Oil."

49. Respondent's failure to properly label a container and three totes containing used oil violated 40 C.F.R. § 279.22(c) (as incorporated by reference pursuant to Mich. Admin. Code r. 299.9810).

Civil Penalty

50. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is **\$45,751.00**. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,751.00 civil penalty for the RCRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of National Galvanizing L.P.," and the docket number of this CAFO.

52. This civil penalty is not deductible for federal tax purposes.

53. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

54. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

55. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

56. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

57. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

58. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

59. The terms of this CAFO bind Respondent, its successors, and assigns.

60. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

61. Each party agrees to bear its own costs and attorney's fees in this action.

62. This CAFO constitutes the entire agreement between the parties.

National Galvanizing L.P., Respondent

4-23-13
Date

V. P. Ambutas
[Person's name, title, V. P. Ambutas
President] V.P.
National Galvanizing L.P.

United States Environmental Protection Agency, Complainant

6/13/2013
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
National Galvanizing L.P.
Docket No. RCRA-05-2013-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-17-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



JUN 24 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CASE NAME: National Galvanizing L.P.
DOCKET NO: RCRA-05-2013-0009

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Mr. David G. Susler
Associate General Counsel
National Materials L.P.
1965 Pratt Boulevard
Elk Grove Village, Illinois 60007



Certified Mail #7009 1680 0000 7663 5318

Dated: 6/24, 2013

Gaye Cuerington
Gaye Cuerington
Administrative Program Assistant
United States Environmental Protection Agency

Region 5
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590