

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
) Docket No. 5-CAA-98-018
GETZEN COMPANY, INC.,)
Elkhorn, Wisconsin) Consent Agreement and
) Consent Order
)
Respondent.)
)
)

CONSENT AGREEMENT AND CONSENT ORDER
ASSESSING ADMINISTRATIVE CIVIL PENALTIES

US ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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RECEIVED
REGIONAL OFFICE

I. STATUTORY AUTHORITY

1. This civil administrative action was instituted pursuant to Section 113(d)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(d)(1), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.01(a)(2) and 22.13.

II. STIPULATED FACTS

2. The Director, Air and Radiation Division, Region 5, U.S. EPA is, by lawful delegation, the Complainant.
3. Respondent is Getzen Company, Inc. (Getzen).
4. Getzen is a Wisconsin corporation that owns and operates a musical instruments production and repair facility located at 530 South Highway H, Elkhorn, Wisconsin.

5. Getzen is a person as defined at Section 302(e) of the Act, 42 U.S.C. § 1602(e).

6. On December 2, 1994, in accordance with Section 112(b) of the Act, U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Halogenated Solvent Cleaning, codified at 40 C.F.R. Part 63, Subpart T.

7. Pursuant to 40 C.F.R. § 63.460, the requirements set forth in 40 C.F.R. Part 63, Subpart T, apply to, among other solvent cleaning machines, batch vapor solvent cleaning machines (degreasers) that use a solvent in a total concentration greater than five percent by weight of any one of or any combination of the following halogenated solvents: Carbon tetrachloride; Chloroform; Perchloroethylene; 1,1,1-Trichloroethane; Trichloroethylene and/or Methylene chloride.

8. Pursuant to 40 C.F.R. § 63.463, the owner or operator of a batch vapor or in-line cleaning machine shall ensure that each existing or new batch vapor or in-line solvent cleaning machine subject to Subpart T conforms to certain design requirements specified at 40 C.F.R. § 63.463(a)(1) through (a)(7).

9. Pursuant to 40 C.F.R. § 63.463(a)(1)(I), an idling and downtime mode cover must completely cover the degreaser openings and be free of cracks, holes and other defects.

10. Pursuant to 40 C.F.R. § 63.463(a)(2), each degreaser shall have a freeboard ratio of 0.75 or greater.

11. Pursuant to 40 C.F.R. § 63.463(b)(1), each owner or operator of a degreaser with a solvent/air interface area of 1.21

square meters (13 square feet) or less shall comply with the control combinations listed in Table 1 of 40 C.F.R. § 63.463(b)(1)(I) or the requirements set forth in 40 C.F.R. § 63.463(b)(1)(ii).

12. As an alternative to meeting the requirements of 40 C.F.R. § 63.463, each owner or operator of a batch vapor or in-line solvent cleaning machine may elect to comply with the requirements of 40 C.F.R. § 63.464.

13. Pursuant to 40 C.F.R. § 63.464(a)(1)(ii), an owner or operator of a degreaser with a solvent/air interface shall ensure that emissions from each degreaser are equal to or less than the applicable emission limit (150 kilograms/square meter/month on a three month rolling average) presented in table 5 of the subpart as determined using the procedures in Section 63.465(b) and (c).

14. 40 C.F.R. § 63.460(d) requires that each solvent cleaning machine subject to Subpart T that commenced construction or reconstruction before November 29, 1993, achieve compliance with the provisions of Subpart T immediately upon starting or by December 2, 1997

15. From at least December 2, 1997 to May 5, 1998, Getzen owned and operated at its facility, among other sources, two solvent cleaning machines (degreasers).

16. Each of the degreasers was a batch vapor degreaser.

17. Each of the degreasers used perchloroethylene in a total concentration greater than five percent by weight and were installed before November 29, 1993.

18. Each of the degreasers has a solvent/air interface area of 1.21 meters or less.

19. Each of the degreasers were subject to the requirements of 40 C.F.R. Part 63, Subpart T, pursuant to 40 C.F.R. § 63.460(a).

20. On May 21, 1998, the Administrator of U.S. EPA issued to Respondent a Notice of Violation for the violations of 40 C.F.R. Part 63, Subpart T, described in Count I of this Complaint.

21. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of, among other things, any rule under Subchapter I of the Act that occurred after January 1997.

22. Complainant initiated this action by filing an Administrative Complaint and Notice of Opportunity for Hearing on Proposed Order Assessing Civil Penalty (Complaint) in this action on August 17, 1998.

23. The Complaint alleged, in one count, that Respondent violated 40 C.F.R. § 63.463(a)(1)(I), 40 C.F.R. § 63.463(a)(2) and 40 C.F.R. § 63.463(b) and thereby, violated Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), by failing to properly cover one degreaser, failing to have a proper free board ratio for both degreasers and failing to utilize the proper control combinations for both degreasers.

24. For the violations alleged in the Complaint, Complainant proposed that Respondent be assessed an administrative civil penalty in the amount of \$28,800.

25. Complainant and Respondent agree that settlement of this matter is in the public interest and that the filing and subsequent entry of this Consent Agreement and Consent Order (CACO) without further litigation is the most appropriate means of resolution. The Complainant and Respondent consent to the filing of this CACO without a hearing on any issue of fact or adjudication on any issue of law. The Respondent enters into this CACO solely for the purpose of settling this matter and does not admit any liability for the claims set forth in the Complaint.

III. CONSENT AGREEMENT

Based on the forgoing stipulations, and having taken into account the penalty assessment criteria set forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Complainant and Respondent agree as follows:

26. For the purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint.

27. For purposes of this proceeding, Complainant and Respondent stipulate to the facts stated in Paragraphs 1 through 25 above. Respondent neither admits nor denies the remaining factual allegations set forth in the Complaint.

28. Respondent waives any and all rights under any provision of law to a hearing on the allegations in the Complaint or to challenge the terms and conditions of this CACO.

29. Respondent certifies that to the best of its knowledge and belief its facility is in compliance with the requirements set forth in 40 C.F.R. § 63.463(a)(1)(I), 40 C.F.R. § 63.463(a)(2) and 40 C.F.R. § 63.463(b).

30. In light of Respondent's cooperative attitude, good faith efforts to reach compliance, and agreement to perform two Supplemental Environmental Projects (SEPs) described in paragraph 35 below, Complainant agrees to mitigate the penalty to \$8,000. The \$8,000 civil penalty is assessed upon the execution of this CACO by the Regional Administrator.

31. The Respondent shall pay the \$8,000 civil penalty by mailing a certified or cashier's check, made payable to "Treasurer, United States of America," to the following address:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Payment of the civil penalty is due within 30 days after Complainant files a fully executed copy of this CACO with the Regional Hearing Clerk.

32. At the time payment of the \$8,000 civil penalty is rendered, Respondent shall separately send notice of such payment, including a copy of the check and the BD number referred

to in the CACO cover letter, to the following three parties:

Regional Hearing Clerk (RHC-19J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

Thor W. Ketzback (C-29A)
Assistant Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Spiros Bourgikos (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

33. Respondent's failure to pay any part of the civil penalty due under this CACO may result in the referral of this matter to the United States Department of Justice for collection of the penalty in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

34. Interest shall accrue on any amount overdue under the terms of this CACO at a rate established pursuant to section 6621(a)(2) of Title 26. In addition, any person who fails to pay the civil penalty in a timely fashion, shall be required to pay the United States' enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which nonpayment persists. The nonpayment penalty shall be the aggregate amount of such person's outstanding penalties and nonpayment penalties which have accrued

as of the beginning of each quarter.

35. Respondent has agreed to undertake two SEPs. The first SEP is an environmental compliance audit (audit) focusing on the facility's operations, records and regulatory requirements (Attachment A). Any violations discovered during the audit must be corrected to meet the terms of this CACO. The second SEP is a biodegradation treatability study (study) which attempts to investigate the feasibility of biodegradation. If the biodegradation method is determined to be an effective means of cleaning up contamination at certain sites, utilizing this method will eliminate the air emissions that stem from the currently used pumping and treating method. (Attachment B). Respondent has 60 days from the effective date of this CACO to implement the SEPs. If the SEPs are not implemented as described in Attachments A and B, Respondent will be subject to stipulated penalties in accordance with paragraph 40. Finally, the audit and the study must begin within 60 days of the effective date of this Order.

36. With regard to the SEPs, Respondent certifies the truth and accuracy of each of the following:

- (a) The estimated cost of \$5,000 for the audit and \$13,800 for the study is, to the best of Respondent's knowledge, a reasonable and good faith estimate of the actual cost of the SEPs and does not include costs of internal labor;
- (b) As of the date of this CACO, Respondent is not required to perform or develop the SEPs by any federal, state,

or local law or regulation, nor is Respondent required to perform or develop the SEPs by agreement, grant or as injunctive relief awarded in this or any other action in any forum; and

- (c) Respondent has not received, and is not presently negotiating to receive, credit for the SEPs in any other enforcement action.

37. Within 90 days of the completion of the audit and the study, Respondent shall submit to U.S. EPA a SEP Completion Report certifying completion. This report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) A description of any operating problems encountered and the solutions thereto;
- (c) An itemized list of all SEP costs and acceptable evidence of those costs.
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this CACO; and
- (e) A description of the environmental and public health benefits resulting from the implementation of the SEP (with a quantification of benefits and pollutant reductions, if feasible).

Respondent bears the burden of documenting and distinguishing SEP costs from other project costs. Other project costs are not eligible for SEP credit. Appropriate documentation of SEP costs includes invoices, purchase orders, or other documentation that specifically identify and itemize the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the

goods and/or services for which payment is rendered. All submissions, including the SEP Completion Report, must be signed by an official with knowledge of the SEP and shall bear the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

38. Within 30 days of the receipt of the SEP Completion Report, U.S. EPA shall review the SEP completion report and do one of the following: (i) accept the SEP report; (ii) reject the SEP report, notify the Respondent, in writing, of any deficiencies in the SEP report and grant Respondent 30 days to correct the deficiencies; or (iii) reject the SEP Report and seek stipulated penalties in accordance with paragraph 40 herein.

If U.S. EPA elects option (ii), U.S. EPA shall permit Respondent the opportunity to object in writing to the to the notification of deficiency or disapproval given pursuant to this paragraph within 10 days of receipt of such notification. U.S. EPA and Respondent shall have 30 days from the receipt by EPA of the notification of objection to reach an agreement. If an agreement cannot be reached within 30 days, U.S. EPA shall provide a written statement of its decision to Respondent, which

shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by U.S. EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Order. If the SEP is not completed as provided in paragraph 30, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 35.

39. Respondent agrees that U.S. EPA may inspect the facility at any time in order to confirm that the SEP is in conformity with the representations made herein.

40. If Respondent fails to comply with the terms or provisions of this CACO relating to the performance of the SEP described in paragraph 35 and/or the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 36, the Respondent shall be liable for stipulated penalties as set forth below:

(i) Except as provided below, if the SEP has not been satisfactorily completed according to the terms set forth in paragraph 35, Respondent shall pay a stipulated penalty to the United States in the amount of \$25 per day until the SEP is completed. However, if the SEP is not satisfactorily completed, but the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the required expenditure was spent on the SEP, a stipulated penalty shall not be assessed.

(ii) If the SEP is satisfactorily completed but the Respondent spent less than 90 percent of the required expenditure for the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between the amount expended and the \$5,000 and \$13,800, the estimated cost of the SEP. If the SEP is satisfactorily completed and the Respondent spends at least 90 percent of the required expenditure, a

stipulated penalty shall not be assessed.

(iii) If the Respondent fails to submit a SEP Completion Report as required by paragraph 37 of this CACO, Respondent shall be assessed a stipulated penalty in the amount of \$25 for each day until the report is submitted. The Respondent's failure to submit any other report required by paragraph 37 of this CACO will result in stipulated penalties assessed upon the Respondent in the amount of \$25 for each day after the report was originally due until the report is submitted.

U.S. EPA has discretion to determine whether a SEP has been satisfactorily completed and whether the Respondent has made a good faith and timely effort to implement the SEP. The stipulated penalties described above shall accrue beginning 15 days after performance is due, and will continue to accrue through the final day when the requirement is completed.

Stipulated penalties from the Respondent are due within fifteen days of the receipt of written demand by U.S. EPA for such penalties. The stipulated penalties shall be paid in accordance with paragraph 40 of this CACO. Stipulated penalties shall not exceed \$20,800, the difference between the proposed penalty of \$28,800 and the \$8,000 cash payment to be made by Respondents according to the terms of this CACO. Interest and late charges shall be paid in accordance with paragraph 34 of this CACO.

Finally, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement, the statutes and regulations upon which this agreement is based or the

Respondent's violation of any applicable provision of law.

41. This CACO does not relieve the Respondent from complying with all applicable provisions of federal, state or local law.

42. Issuance of this CACO does not constitute a waiver by the U.S. EPA of its remedies, either judicial or administrative, under the CAA, 42 U.S.C. §§ 7401 through 7671q, except that U.S. EPA waives any right to seek additional civil penalties for the violations alleged in the Complaint. Except as waived herein, Respondent expressly reserves all rights, remedies, and defenses it may have with respect to any subsequent action brought by Complainant to enforce the CAA, 42 U.S.C. §§ 7401 through 7671q.

43. The parties each agree to bear all of their own costs and attorneys fees incurred with respect to this adjudication.

44. This CACO shall be binding upon the parties and in full effect upon the filing of this CACO with the Regional Hearing Clerk.

GETZEN COMPANY, INC.
RESPONDENT

11-18-98
Date

Edward Getzen
Edward Getzen, President
Getzen Company, Inc.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
COMPLAINANT

11/25/98
Date

Steve H. Rothblatt For
Steve H. Rothblatt, Director
Air & Radiation Division

Consent Agreement and Consent Order
In the Matter of Getzen Company, Inc.
Docket No. 5-CAA-98-018

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Complainant and Respondent are hereby **ORDERED** to comply with all terms of the Consent Agreement, effective upon the filing of the Consent Agreement and Consent Order with the Regional Hearing Clerk.

12/1/98
Date


David A. Ullrich
Acting Regional Administrator
U.S. EPA, Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

MEVERDEN ENVIRONMENTAL, INC.

5159 NORTH BAY RIDGE AVENUE

WHITESHA BAY, WI 53217

414/332-3286

FAX: 414/332-6683

October 25, 1998

Mr. Ed Getzen
Getzen Company, Inc.
530 South Highway H
P.O. Box 440
Elkhorn, WI 53105

Dear Ed:

SUBJECT: Proposal to Conduct Environmental Compliance Audit

Meverden Environmental, Inc. is pleased to present this proposal to conduct an environmental compliance audit of your facility. I am well qualified to complete this project, considering my familiarity with your plant and past performance of numerous audits of this type. In general, this project will assess your facility's current level of compliance with pertinent federal, state and local environmental regulations.

SCOPE OF SERVICES

This project will consist of three distinct tasks, including plant and file reviews and a review of applicable environmental regulations. The plant review will include a detailed walkthrough of all plant facilities and grounds. This will familiarize me with the operations and chemicals used in the processes. Interviews conducted during the site visit will allow me to collect information regarding the facility's enforcement and spill history, waste handling methods and inspection, maintenance and recordkeeping procedures.

File reviews will then be conducted to assist in the compliance determination. These include plant files pertaining to air emissions, wastewater discharges, SARA Title III and solid and hazardous waste. In addition, all material safety data sheets kept on file by the facility will be scrutinized. Agency files will not be reviewed as part of this project and, as we discussed, little time will be spent on compliance issues related to the ongoing remediation project.

After all plant information is gathered, a regulatory review will be conducted. During this task, all collected information will be compared to current state, federal and local regulations and ordinances. These regulations include those promulgated under the following:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Resource Conservation and Recovery Act
- Emergency Planning and Community Right-to-Know Act

Finally, observations, findings and conclusions resulting from these three tasks will be presented in a comprehensive report. The tasks to be conducted are discussed separately below.

A. Plant Review

The on-site activities will consist of several distinct subtasks. The first will include an opening conference during which the purpose and procedures will be discussed. The conference will allow collection of general information regarding reporting, routine program administration and regulatory history, including:

- General Facility Information
- Enforcement History
- Spill History
- Waste Handling and Accumulation Methods
- Manifest Handling Procedures
- Inspection Procedures
- Regulatory Reporting
- Training Procedures
- Equipment and Process Monitoring

The next segment of the audit will include a plant tour and perimeter walk. The purpose of the plant tour is to gain familiarity regarding layout, production processes, raw materials, waste and wastewater generation and air handling. Outdoor storage, potential spill sites and facility drainage will be assessed during the perimeter walk. Information will be recorded in field notes and a review questionnaire.

B. File Review

The plant files will be reviewed to assist in determining compliance. During this task at least three years of plant environmental records will be located and scrutinized. These records include:

Waste Management

- Required Notifications
- Manifests
- Analytical Reports

Air Emissions

- Permits and Permit Applications
- Process Monitoring Records
- Emission Calculations

EPCRA

- Required Notifications
- Form R Reports
- Tier II Reports
- Material Safety Data Sheets

requirements of the Walworth County Metropolitan Sewerage District. At a minimum the profile will contain information relative to:

- Wastewater Treatment
- Chemical Management
- Hazardous Waste Management
- Personnel Training and Spill Prevention
- Emergency Spill Procedures

COST AND SCHEDULE

This project will be carried out in accordance with the attached General Terms and Conditions. The cost to perform the activities listed above are tabulated below.

Environmental Compliance Audit	\$3,000.00
Annual Hazardous Waste Training	\$900.00
Facility Compliance Profile	\$1,100.00
Total Project Costs	\$5,000.00

This project can begin immediately upon written authorization to proceed and is expected to require 2-4 weeks to complete.

I appreciate the opportunity to submit this proposal and look forward to serving Getzen. Please call me at 414/332-3285 if you have any questions.

Sincerely,

MEVERDEN ENVIRONMENTAL, INC.



James R. Meverden, P.E.
Principal

Cc: Buck Sweeney/Michael, Best & Friedrich



Engineering & Remedial Services

November 9, 1998

VIA FAX and U.S MAIL

Mr. Charles Sweeney, Esquire
Michael Best & Friedrich L.L.P.
One South Picaney Street
P.O Box 1806
Madison, Wisconsin 53701

Subject: The Getzen Company
530 County Highway H
Elkhorn, Wisconsin 53121

Dear Mr. Sweeney:

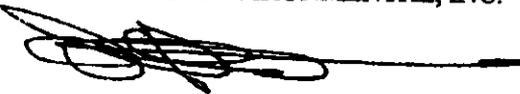
Let this letter serve as confirmation that Inland Environmental, Inc. (Inland) is currently contracted with The Getzen Company to perform a biotreatability study designed to evaluate and optimize the stimulation of indigenous microorganisms to degrade the organic contaminants of concern which are distributed within the subsurface at the above mentioned subject site location.

This study is currently underway and it is anticipated that the biotreatability study will be completed no later than mid December of 1998 which is well within 60 days of the proposed consent agreement and consent order which, per your advice, is the subject of current negotiation with the U.S. EPA and The Getzen Company.

Inland is also contracted with The Getzen Company to provide environmental engineering and remedial design services relating to the full scale implementation of the proposed biological remedial corrective actions at the said site. Additionally, Inland is providing environmental services relating to certain testing and reporting requirements under a separate services agreement.

Please contact me if you have any questions or require further assistance regarding this important project.

Sincerely,
INLAND ENVIRONMENTAL, INC.



David Frycek
President

DF/mo

cc: Mr. Ed Getzen

J:\6077\letters\19mbf\lr

CERTIFICATE OF SERVICE

I hereby certify that the Original of the attached Consent Agreement and Consent Order was filed with the Regional Hearing Clerk, and that true and accurate copy were caused to be mailed to:

Edward Getzen, President
Getzen Company, Inc.
530 South Highway H
Elkhorn, Wisconsin 53105

Certified Mail Number P140 888347

12-2-98
Date

Shanee Rucker
Shanee Rucker, Secretary
AECAS MI/WI

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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REGIONAL PROGRAMS