



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



April 4, 2003

Don R. Riley, President & COO
Technical Research and Manufacturing, Inc.
280 South River Road
Bedford, NH 03110

Re: Docket No. AF 02-042 - Administrative Fine by Consent Agreement

Dear Mr. Riley:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Phillip J. O'Brien, Ph.D., Director of the Waste Management Division, and accepted by Acting Commissioner Robert Monaco on April 3, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

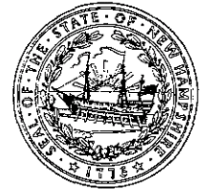
Michael Sciafani, Legal Assistant

cc: Phillip J. O'Brien, Ph.D., Director, Waste Management Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
Mary Ann Tilton, DES WWT
Linda Magoon, DES WWT



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Technical Research and Manufacturing, Inc.
280 South River Road
Bedford, NH 03110

RE: Technical Research and Manufacturing, Inc.
7 Sunset Lane, Bedford, NH
EPA ID No. NHD500008107

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 02-042

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Technical Research and Manufacturing, Inc., pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of NH, having its main office at 6 Hazen Drive, Concord, NH.
2. Technical Research and Manufacturing, Inc. ("TRM") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on June 22, 1970. TRM has a mailing address of 280 South River Road, Bedford, NH. TRM has a facility located at 7 Sunset Lane in Bedford, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this

section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.

3. TRM is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on February 17, 1995. EPA Identification Number NHD500008107 was assigned to TRM's site located at 7 Sunset Lane in Bedford, NH.

4. On September 26, 2002, February 20, 2002, and February 22, 2001, DES personnel inspected TRM for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules, codified as Env-Wm 100-1100. As a result of violations of the Hazardous Waste Rules observed during these inspections, DES issued Administrative Order No. 02-01 ("Order") to TRM on October 7, 2002. Based on observations during the inspections listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Specifically, the Order cited TRM for failing to conduct an adequate hazardous waste determination for the contents of the tank in the basement and the melted remains of the 10-gallon plastic tank in the garage, as required by Env-Wm 502.01 ("Violation 1"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$3,000.

2. Specifically, the Order cited TRM for failing to notify DES of changes to the information provided in their initial notification form, as required by Env-Wm 504.02(d) ("Violation 2"). Env-C 612.08(e), which references Env-Wm 504.02(c) modified in August 2000 to Env-Wm 504.02(d), authorizes a fine of \$500, for a potential fine of \$500.

3. Specifically, the Order cited TRM for failing to close one (1) 30-gallon and eleven (11) 55-gallon containers of hazardous waste (*i.e.*, two (2) 55-gallon containers at the September 26, 2002 inspection; one (1) 55-gallon container at the February 20, 2002 inspection; one (1) 30-gallon and eight (8) 55-gallon containers at the February 22, 2001 inspection) and six (6) 275-gallon tanks of hazardous waste (*i.e.*, two (2) tank violations at each of the three (3) inspections), except to add or remove waste, as required by Env-Wm 507.01(a)(3) ("Violation 3"). Env-C 612.06(c)(1) authorizes a fine of \$400 for each container that is 55-gallons or greater and Env-C 612.06(c)(2) authorizes a fine of \$200 for each container that is greater than 5 gallons but less than 55 gallons, for a potential fine of \$7,000.

4. Specifically, the Order cited TRM for failing to ship three (3) containers of hazardous waste (*i.e.*, two (2) containers at the February 22, 2001 inspection; one (1) container at the February 20, 2002 inspection) off-site within 90 days of the date when accumulation first began, except as provided in Env-Wm 508.02, Env-Wm 508.03, and Env-Wm 509.03, as required by Env-Wm 507.02(a) ("Violation 4"). Env-C 612.06(j), which references Env-Wm 507.02(a)(2) modified in August 2000 to Env-Wm 507.02(a) authorizes a fine of \$500 for each container not shipped within 90 days, for a potential fine of \$1,500.

5. Specifically, the Order cited TRM for failing to mark one (1) 30-gallon and sixteen (16) 55-gallon hazardous waste containers (*i.e.*, seven (7) 55-gallon containers at the September 26, 2002 inspection; one (1) 55-gallon container at the February 20, 2002 inspection; one (1) 30-gallon and eight (8) 55-gallon containers at the February 22, 2001 inspection) and six (6) 275 tanks of hazardous waste (*i.e.*, two (2) tank violations at each of the three (3) inspections), with the beginning accumulation date when they are first used to store hazardous waste, as required by Env-Wm 507.03(a)(1)a. ("Violation 5"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is 55-gallons or greater and \$125 for each container that is less than 55-gallons, for a potential fine of \$5,625.

6. Specifically, the Order cited TRM for failing to mark one (1) 30-gallon and nineteen (19) 55-gallon hazardous waste containers (*i.e.*, seven (7) 55-gallon containers at the September 26, 2002 inspection; two (2) 55-gallon containers at the February 20, 2002 inspection; one (1) 30-gallon and ten (10) 55-gallon containers at the February 22, 2001 inspection) with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number when they are first used to store hazardous waste, as required by Env-Wm 507.03(a)(1)b., c., and d. ("Violation 6"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater and \$300 for each container that is less than 55-gallons, for a potential fine of \$11,700.

7. Specifically, the Order cited TRM for failing to conduct inspections of the facility for three years as required by Env-Wm 509.02(a)(1) ("Violation 7"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week, for a potential fine of \$156,000.

8. Specifically, the Order cited TRM for failing to maintain a personnel training program and to adequately train all personnel handling hazardous waste, as required by Env-Wm 509.02(a)(2): four (4) annual hazardous waste trainings for one (1) person (Safety Officer/Systems Support Coordinator); and initial hazardous waste training for one (1) person (PC Shop Group Leader/HW handler) ("Violation 8"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training and \$1,000 per individual not trained for annual updates, for a potential fine of \$5,750 (*i.e.*, four (4) annual updates; one (1) initial training).

9. Specifically, the Order cited TRM for failing to maintain adequate preparedness and prevention measures by not maintaining the required aisle space at the garage hazardous waste storage area, as required by Env-Wm 509.02(a)(4) ("Violation 9"). Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area, for a potential fine of \$1,250.

10. Specifically, the Order cited TRM for failing to maintain a complete contingency plan at the facility, as required by Env-Wm 509.02(a)(5) ("Violation 10"). Env-C 612.07(e) authorizes a fine of \$2,000 for this violation, for a potential fine of \$2,000.

11. Specifically, the Order cited TRM for failing to store hazardous waste in two (2) tanks that meet the specifications of 40 CFR 265 Subpart J—Tank Systems and comply with applicable tank standards, as required by Env-Wm 509.02(a)(7) ("Violation 11"). Env-C 612.07(g) authorizes a fine of \$2,000 per tank, for a potential fine of \$4,000.

12. Specifically, the Order cited TRM for failing to post complete emergency information at the telephone nearest to two (2) hazardous waste storage areas, as required by Env-Wm 509.02(b) ("Violation 12"). Env-C 612.07(h) authorizes a fine of \$1,000 per area, for a potential fine of \$2,000.

V. PAYMENT, WAIVER OF HEARING

1. For purposes of settlement, DES agrees to the following:

- a. Violation 1 is a Class I violation. However, TRM documented that one (1) waste stream was analyzed and determined to be non-hazardous. DES is thus seeking a fine of \$1,500.
- b. Violation 2 is a Class I violation, and so DES is seeking the full \$500.
- c. Violation 3 is a Class I violation. DES believes that \$2,800 in penalties for the February 20, 2002 and September 26, 2002 inspections be suspended based on the fact that TRM did not receive written notice of the violations until the Order was issued on October 10, 2002. DES is thus seeking a penalty of \$4,200 (*i.e.*, failing to close one (1) 30-gallon and eight (8) 55-gallon containers, and two (2) tanks).
- d. Violation 4 is a Class I violation. DES believes that \$500 in penalties for the February 20, 2002 inspection be suspended based on the fact that TRM did not receive written notice of the violation until the Order was issued on October 10, 2002. DES is thus seeking a penalty of \$1,000 (*i.e.*, failing to ship two (2) containers within ninety (90) days).
- e. Violation 5 is a Class I violation. DES believes that \$3,000 in penalties for the February 20, 2002 and September 26, 2002 inspections be suspended based on the fact that TRM did not receive written notice of the violations until the Order was issued on October 10, 2002. DES is thus seeking a penalty of \$2,625 (*i.e.*, failing to mark one (1) 30-gallon and eight (8) 55-gallon containers, and two (2) tanks).
- f. Violation 6 is a Class I violation. DES believes that \$5,400 in penalties for the February 20, 2002 and September 26, 2002 inspections be suspended based on the fact that TRM did not receive written notice of the violations until the Order was issued on October 10, 2002. DES is thus seeking a penalty of \$6,300 (*i.e.*, failing to mark one (1) 30-gallon and ten (10) 55-gallon containers).
- g. Violation 7 is a Class I violation. TRM failed to conduct inspections of the hazardous waste storage areas for three (3) years. For settlement purposes only, DES is seeking a fine for failing to conduct inspections at one (1) hazardous waste storage area for twenty-five (25) weeks. The Division is thus seeking a penalty of \$25,000 (*i.e.*, twenty-five (25) inspections at \$1,000 each).

- h. Violation 8 is a Class I violation, and so DES is seeking the full \$5,750.
- i. Violation 9 is a Class I violation, and so DES is seeking the full \$1,250.
- j. Violation 10 is a Class I violation, and so DES is seeking the full \$2,000.
- k. Violation 11 is a Class I violation, and so DES is seeking the full \$4,000.
- l. Violation 12 is a Class I violation, and so DES is seeking the full \$2,000.

2. In view of the fact that this is a first time inspection for TRM and the Sunset Lane facility is a small one person operation, DES agrees to suspend an additional \$28,000, plus the \$11,700 suspended under Section V. Paragraph 1. c. through f., for a total suspension of \$39,700 contingent on TRM committing no violations of statutes or rules implemented by DES for a period of two (2) years from the effective date of this Agreement. If TRM is found to have violated this condition, regardless of when the determination is made, a pro-rated portion of the suspended fine shall be immediately due and payable without opportunity for hearing, in addition to any penalty that may be imposed for the new violations(s).

3. Upon compliance by TRM with the conditions specified in Section V. Paragraph 2, DES will waive the associated fine amount.

4. TRM shall pay the remaining \$28,125 as follows:

- a. \$4,690 shall be due and payable upon execution of this Agreement by TRM.
- b. \$23,435 shall be paid in five equal payments of \$4,687 due on the first of each month beginning May 1, 2003 and ending September 1, 2003

5. Payment under Section V. Paragraph 4 and any fines that become due pursuant to Section V. Paragraph 2 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani
PO Box 95
Concord, NH 03302-0095

6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

- 7. By executing this Agreement, TRM waives its right to a hearing on or any appeal of the administrative fines identified in Section IV. Paragraphs 1 through 12, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
- 8. The effective date of this Agreement will be the date on which it is signed by an authorized representative of TRM, and the Director of the Waste Management Division, and the Commissioner of DES.
- 9. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

TECHNICAL RESEARCH AND MANUFACTURING, INC.

COPY

D. R. Rinaldi, President & CEO
Duly Authorized

3.21.03
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Philip J. O'Brien, Ph.D., P.G.
Director
Waste Management Division

3/28/03
Date

COPY

Robert M. DeLo, Acting Commissioner
Department of Environmental Services

4-03-03
Date