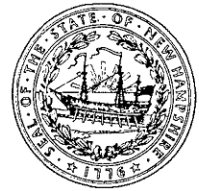




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.
January 5, 2004

Agfa Corporation
Attn: Russell Spencer, Executive V.P.
200 Ballardvale Street
Wilmington, MA 01887-1069

Re: Docket No. AF 03-017 - Administrative Fine by Consent Agreement

Dear Mr. Spencer:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on December 29, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

Michael Sclafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
Linda Birmingham, DES HWC
DES Public Information Officer



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Agfa Corporation
200 Ballardvale St., MS200-4-2J
Wilmington, MA 01887

RE: Agfa Corporation
46 River Road, Hudson, NH

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 03-017

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Agfa Corporation, 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 New Hampshire, having its main office at 6 Hazen Drive, Concord, NH.
2. Agfa Corporation ("Agfa") is a Delaware Corporation, which registered with the New Hampshire Secretary of State's Office on December 8, 1998. Agfa's divisional headquarters are located at 200 Ballardvale St., Wilmington, MA 01887. Agfa's Hudson, NH facility has an address of 46 River Road, Hudson, 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 of DES 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. Agfa is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 16, 1999. EPA Identification Number NHD986466423 was assigned to Agfa's site located at 46 River Road, Hudson, NH.

4. On September 19, 2002, DES personnel inspected Agfa for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Administrative Order No. WMD 03-04 ("Order") to Agfa on January 10, 2003. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations. Agfa has disputed the violations alleged in the Order and the grounds for imposing fines.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Specifically, the Order cited Agfa for failing to conduct adequate waste determinations on two (2) waste streams (*i.e.*, processor waste and processor waste spill debris), 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 Agfa for failing to mark one (1) 55-gallon container of hazardous waste "processor waste spill debris" with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 2"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is 55-gallons or greater.

3. Specifically, the Order cited Agfa for failing to properly mark one (1) 55-gallon container of hazardous waste "processor waste spill debris" with the words "Hazardous Waste", the contents of the container, and EPA or state waste number, as required by Env-Wm 507.03(a)(1)b., c., and d. ("Violation 3"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater.

4. Specifically, the Order cited Agfa for failing to conduct and document inspections of the hazardous waste storage area for fifteen (15) weeks, during the period between May 2001 and December 2001, as required by Env-Wm 509.02(a)(1) ("Violation 4"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area, for a potential fine of \$15,000.

5. Specifically, the Order cited Agfa for failing to perform initial hazardous waste training for seven (7) employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2) ("Violation 5"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training, for a potential fine of \$12,250.

6. Specifically, the Order cited Agfa for failing to maintain an adequate contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 6"). Env-C 612.07(e) authorizes a fine of \$2,000.

7. Specifically, the Order cited Agfa for failing to post a complete emergency posting at the nearest telephone to the hazardous waste storage area, as required by Env-Wm 509.02(b) ("Violation 7"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.

8. Specifically, the Order cited Agfa for failing to forward one (1) copy of hazardous waste manifest MAQ 201712, with signatures, to the department within five (5) days, as required by Env-Wm 510.02(d) ("Violation 8"). For this violation, a fine of \$500 per shipment has been calculated pursuant to Env-C 610.
9. Specifically, the Order cited Agfa for failing to properly complete item J on forty-four manifests representing the processor waste, (*i.e.*, item J on manifest marked with the words "to be recycled" for processor waste which in fact was not destined for recycle), as required by Env-Wm 510.03(i)(6) ("Violation 9"). Subsequently Agfa submitted documentation that on twelve (12) manifests, representing the processor waste, item J was properly completed (*i.e.*, processor waste was destined for recycle). Env-C 612.04(b) authorizes a fine of \$500 per shipment, for a potential fine of \$16,000.
10. Specifically, the Order cited Agfa for failing to pay the quarterly hazardous waste generator fee for 111,946 pounds of hazardous waste (processor waste), manifested in ten (10) quarters from the fourth quarter of 1999 to the second quarter of 2002, as required by Env-Wm 512.02(c) ("Violation 10"). Subsequently, Agfa submitted documentation that it failed to pay the quarterly hazardous waste generator fee for 100,694 pounds of hazardous waste manifested in four (4) quarters. For this violation, a fine of \$125 per quarter, for a total potential fine of \$500 has been calculated pursuant to Env-C 610. In addition, Agfa owes an additional \$2,052 in delinquent hazardous waste fees (*i.e.*, \$2,243 delinquent fees from fourth quarter 2001 to third quarter 2002 with a \$191 credit due on hazardous waste fees from the fourth quarter of 1999 to the third quarter of 2001).
11. Specifically, the Order cited Agfa for failing to certify the accuracy of ten (10) quarterly reports by a responsible company official (*i.e.*, Agfa certified ten (10) inaccurate quarterly reports), as required by Env-Wm 512.02(g)(7) ("Violation 11"). Subsequently, Agfa submitted information that a responsible company official certified the accuracy of six (6) quarterly reports. For this violation, a fine of \$500 per quarter, for a total potential fine of \$2,000 has been calculated pursuant to Env-C 610.
12. Specifically, the Order cited Agfa for failing to correctly categorize materials that are to be recycled (*i.e.*, the processor waste was incorrectly categorized as a material to be recycled), as required by Env-Wm 803.02 ("Violation 12"). For this violation, a fine of \$2,000 per categorization has been calculated pursuant to Env-C 610.
13. Specifically, the Order cited Agfa for failing to store universal waste lamps in container(s), as required by Env-Wm 1112.03(a) ("Violation 13"). For this violation, a fine of \$1,000 for storage practices that pose a hazard to human health and the environment has been calculated pursuant to Env-C 610.
14. Specifically, the Order cited Agfa for failing to label fluorescent bulbs with any of the following markings: "Universal Waste - Lamps(s)", "Waste Lamp(s)", or "Used Lamp(s)", as required by Env-Wm 1112.04 ("Violation 14"). For this violation, a fine of \$100 per container has been calculated pursuant to Env-C 610.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 2-4, 7-8, and 13-14, because they are not Class I violations.
2. DES agrees to accept the fines listed below for the Class I violations:
 - a. \$3,000 for Violation 1;
 - b. \$12,250 for Violation 5;
 - c. \$2,000 for Violation 6;
 - d. \$16,000 for Violation 9; and
 - e. \$500 for Violation 10;
3. DES is not seeking a fine for Violations 11 or 12 because they are addressed by the fines sought for Violations 10 and 9, respectively.
4. DES agrees to reduce the penalty by \$10,800 (32%) based on Agfa having no history of non-compliance with hazardous waste requirements (12%), its level of cooperation (15%), and additional information submitted by Agfa (5%).
5. Agfa agrees to pay of the remaining fine of \$22,950 plus \$2,052 for delinquent hazardous waste fees, for a total payment of \$25,002, upon execution of this Agreement by an authorized representative of Agfa. Full payment shall satisfy Agfa's liability for all administrative fines which could have been imposed by DES for violations alleged in the Order.
6. Payment under Section V. Paragraph 5 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, Legal Assistant
PO Box 95
Concord, NH 03302-0095
7. 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.
8. By executing this Agreement, Agfa waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

9. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in Paragraph 8 above, this Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Agfa; (ii) an admission by Agfa or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Agfa might raise in any third party proceeding.

10. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Agfa, the Director of the Waste Management Division, and the Commissioner of DES.

11. 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.

AGFA CORPORATION

COPY

By: Russell Spencer
Russell Spencer, Executive Vice President
Duly Authorized

11/24/03
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Anthony P. Giunta
Anthony P. Giunta, P.G.
Director
Waste Management Division

12/24/03
Date

COPY

Michael P. Nolin
Michael P. Nolin, Commissioner

12 29 03
Date