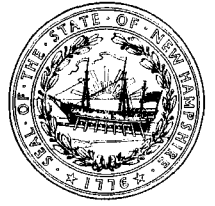




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

October 12, 2006

Worthen Industries, Inc.
UPACO Division
Attn: Robert F. Worthen
3 East Spit Brook Road
Nashua, NH 03060-5783

Re: Docket No. AF 06-040 - Administrative Fine by Consent Agreement

Dear Mr. Worthen:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

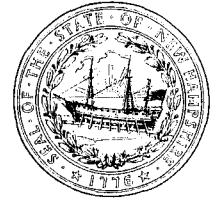
On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,
COPY
Michael P. Sclafani,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Jennifer J. Patterson, NH DOJ
Linda Birmingham, DES WMD
Paul L. Heirtzler, DES WMD
John Duclos, DES WMD
DES Public Information Officer
John Pastore, Worthen Industries



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Worthen Industries, Inc.
UPACO Division
3 East Spit Brook Road
Nashua, NH 03060-5783

EPA ID No. NHD001038348

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 06-040

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Worthen Industries, Inc., UPACO Division, pursuant to RSA 147-A and the New Hampshire Administrative Rule Env-C 601. 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 principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Worthen Industries, Inc., UPACO Division (“UPACO”) is a New Hampshire corporation having a mailing address of 3 East Spit Brook Road, Nashua, NH 03060-5783.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services 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 offense 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. UPACO is a hazardous waste generator that notified the United States Environmental Protection Agency (“EPA”) of its activities through DES on July 17, 1981. EPA Identification Number NHD001038348 was assigned to UPACO’s site located at 3 East Spit Brook Road in Nashua, New Hampshire.
4. On June 9, 2005, DES personnel inspected UPACO for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued

Administrative Order No. WMD 06-001 ("AO") to UPACO on January 18, 2006. 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.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. UPACO failed to obtain a permit for the disposal of an F002 hazardous waste in a solid waste container (*i.e.*, F002 Cloth Wipers), as required by RSA 147-A:4, I and Env-Wm 353.01("Violation 1"). Env-C 612.03(b) authorizes a fine of \$2,000 per disposal event.
2. UPACO failed to conduct adequate hazardous waste determinations on three (3) waste streams (*i.e.*, waste cloth wipers, waste "lab pack" chemicals, and adhesive waste stored in the K and L rows), as required by Env-Wm 502.01 ("Violation 2"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$4,500.
3. UPACO failed to ship off-site ten (10) containers (*i.e.*, 3640 pounds of hazardous waste in the K and L rows) 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 3"). Env-C 612.06(j), which references Env-Wm 507.02(a)(3), 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 \$5,000.
4. UPACO failed to document inspections of the hazardous waste storage area for a total of twenty-six (26) weeks over a 1-year time period, 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 per week. For settlement purposes only, DES is seeking a fine for the time period of seventeen (17) weeks prior to the date of the inspection. UPACO performed all the required inspections for the seventeen (17) weeks prior to the inspection, thus DES is not seeking a fine for this violation.
5. UPACO failed to maintain a personnel training program and provide hazardous waste training for the following employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2): no initial training and four (4) years of annual training for Emergency Coordinator James Demaso; one (1) year of annual training for Emergency Coordinator John Green; and one (1) year of annual training for Emergency Coordinator Richard Rowell ("Violation 5"). 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 \$7,750.
6. UPACO failed to maintain a complete 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. UPACO failed to accumulate no more than 55-gallons of hazardous waste at the Ross Vessel satellite storage area, as required by Env-Wm 509.03 ("Violation 7"). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in the same satellite storage area.

8. UPACO failed to maintain satellite storage containers at the Churn Room satellite storage area “at or near the point of generation and under the control of the operator generating the wastes”, as required by Env-Wm 509.03 (“Violation 8”). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area.
9. UPACO failed to provide initial hazardous waste training and review training every three (3) years to an employee handling hazardous waste, as required by Env-Wm 509.03(b) (“Violation 9”). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in the same satellite storage area.
10. UPACO failed to keep eight (8) satellite storage containers of hazardous waste located at six (6) satellite areas, closed at all times except to add or remove waste, as required by Env-Wm 509.03(d) and Env-Wm 507.01(a)(3) (“Violation 10”). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in the same satellite storage areas.
11. UPACO failed to mark ten (10) satellite storage containers located at eight (8) satellite areas, used for the storage of hazardous waste with the words “hazardous waste” and with a description of the contents, as required by Env-Wm 509.03(g) (“Violation 11”). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$8,000.
12. UPACO failed to mark one (1) full 55-gallon satellite storage container of hazardous waste located at the Ross Vessel with the excess accumulation date and the EPA or state waste code when the 55-gallon accumulation limit is reached, as required by Env-Wm 509.03(i)(1)a. and b. (“Violation 12”). The potential fine for this violation is included in the fine sought in Paragraph 11 because the violation occurred in the same satellite storage area.
13. UPACO failed to store three (3) universal waste lamps located in the Maintenance Area in container(s), as required by Env-Wm 1102.03(c) and Env-Wm 1112.03(a) (“Violation 13”). Pursuant to Env-C 610, a fine of \$25/lamp has been calculated, for a potential fine of \$75.
14. UPACO failed to label/mark the three (3) universal waste lamps with any of the following markings: “Universal Waste – Lamps(s),” “Waste Lamp(s),” or “Used Lamp(s),” as required by Env-Wm 1102.03 and Env-Wm 1112.04 (“Violation 14”). Pursuant to Env-C 610, a fine of \$10/lamp has been calculated, for a potential fine of \$30.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 4 through 6, 8, 13, and 14 because they are not Class I violations.
2. DES asserts that the following fines are appropriate for Violations 1 through 3, 7 and 9 through 12, which are Class I violations.

- a. Violation 1 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$2,000.
 - b. Violation 2 is a Class I violation. DES has determined that due to UPACO's high level of cooperation in providing information and its effort to correct the violation that a 25% reduction should be applied. DES is thus seeking a fine of \$3,375.
 - c. Violation 3 is a Class I violation. DES has determined that due to UPACO's high level of cooperation in providing information, its effort to correct the violation and the fact that this was a one time unintentional violation, that a 35% reduction should be applied (*i.e.*, (25%) cooperation and (10%) one time unintentional). DES is thus seeking a fine of \$3,250.
 - d. Violation 11 is a Class I violation. DES has determined that due to UPACO's high level of cooperation in providing information and its effort to correct the violation that a 25% reduction should be applied. DES is thus seeking a fine of \$6,000.
 - e. The potential fine for Violation 7, 9, 10 and 12 are included in the fine sought for Violation 11.
3. The total administrative fine for the Class I violations as described above is \$14,625 of which \$9,750 shall be a cash fine paid in accordance with Paragraph 5 and \$4,875 shall be credited toward a Supplemental Environmental Project ("SEP") in accordance with Paragraph 4.
4. UPACO shall expend at least \$9,750 to purchase and install a power wash unit (pump, spray assembly, and hose). The SEP is valued at a 2:1 ratio (*i.e.*, for every two dollars spent on the SEP or \$9,750, one dollar is accounted for from the fine amount of \$4,875). The SEP is not otherwise required by virtue of any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. The SEP which will allow UPACO to reduce the number of bulk washes required to clean reactors P-20, P-10, and P-9, which will reduce the volume of methyl ethyl ketone spent wash that is generated and managed as a hazardous waste. UPACO shall complete this project within six (6) months of the execution of this Agreement and shall certify to DES within seven (7) months of the effective date of this Agreement that the SEP has been completed and that at least \$9,750 in costs were incurred. UPACO shall submit with this certification, copies of purchase orders and receipts. If the final cost of the equipment does not reach the \$9,750 commitment, then any difference will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund by the same method outlined under Section V. Paragraph 5 within ten (10) days of the six (6) month anniversary of the Agreement.
5. Payment under Section V. Paragraph 3 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

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, UPACO 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.
8. The effective date of this Agreement will be the date on which it is signed by an authorized representative of UPACO, 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.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

WORTHEN INDUSTRIES, INC., UPACO DIVISION

COPY


By: Robert F. Worthen, President
Duly Authorized

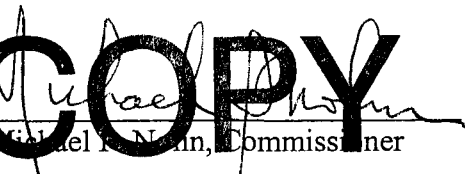
9/26/06
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY


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

10/11/06
Date

COPY


Michael R. Naim, Commissioner

10 11 06
Date

cc: DB/RCRA/ORDER/ARCHIVE
Paul L. Heirtzler, P.E., Esq., Administrator, WMP
John Pastore, Plant Superintendent, Worthen Industries, Inc., UPACO Division, 3 E. Spit Brook Rd.,
Nashua, NH 03060-5783
John J. Duclos, Administrator HWCB-WMD
Gretchen Hamel, Legal Unit Administrator, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, NHDOJ