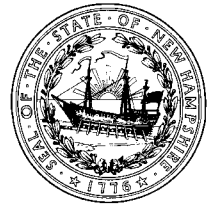




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

October 25, 2010

William Serra, Director EHS
Thompson/Center Arms Company, Inc.
400 North Main Street
Rochester, NH 03866

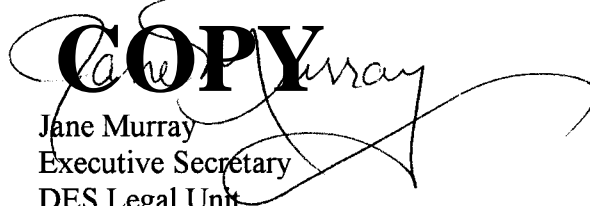
Re: Docket No. AF 10-055 - Administrative Fine by Consent Agreement

Dear Mr. Serra:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above mentioned matter. We are in receipt of your payment pursuant to Section V, Paragraph 3 of the agreement.

On behalf of the Department of Environmental Services, thank you for your cooperation in this matter. This letter does not provide relief against any existing or future violations.

Sincerely,

COPY

Jane Murray
Executive Secretary
DES Legal Unit

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
DES Public Information Officer
Robert Bishop, DES
Rochester City Manager

cc: DES Legal Unit



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Thompson/Center Arms Company, Inc.
400 North Main Street
Rochester, NH 03866

Re: EPA ID # NHD002059525

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 10-055

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Thompson/Center Arms Company, Inc. pursuant to RSA 147-A. This Administrative Fine by Consent 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 in Concord, New Hampshire.
2. Thompson/Center Arms Company, Inc. ("Thompson") is a New Hampshire corporation having a local mailing address of P.O. Box 5002, Rochester, NH, 03866. Thompson's principal office is located at 2100 Roosevelt Avenue in Springfield, Massachusetts.

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 NH CODE ADMIN. RULES 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 NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations.
3. Thompson is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on August 15, 1980. Thompson manufactures an extensive line of single shot pistols and rifles plus a full line of muzzle loading rifles and "black powder" accessories. EPA Identification Number NHD002059525 was

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

assigned to Thompson's site located at 400 North Main Street in Rochester, New Hampshire (the "Facility").

4. In January of 2008, DES personnel inspected the Facility 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 the inspections, DES issued Letter of Deficiency No. WMD 08-009 to Thompson on April 8, 2008. 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. Thompson failed to document the time and date of the inspection, as required by Env-Hw 304.04(g)(7) [was Env-Wm 353.04(g)(7)] and Permit No. DES-HW-03-09, on the log for the wastewater treatment unit ("Violation 1"). For settlement purposes only, and because Thompson was conducting the inspections of the wastewater treatment unit, DES is not seeking a fine for this violation.

2. Thompson failed to conduct adequate hazardous waste determinations, as required by Env-Hw 502.01 [was Env-Wm 502.01], for the Lab Pack Chemicals, Waste Kolene Solids, Waste Bluing Salts Liquid, Waste Bluing Salts Solid, Waste Bluing Salts Sludge, Steel/Carbon Sludge, and Used VHP E210 Coolant ("Violation 2"). For these violations, Env-C 612.05(a) authorizes a fine of \$1,500 per determination not made, for a potential fine of \$10,500.

3. Thompson failed to notify DES in writing of a change in ownership, as required by Env-Hw 504.02(e) [was Env-Wm 504.02(c)], within 30 days of the effective date of the change. According to DES notification records, Thompson was owned by O.L. Development. At the time of the inspection it was discovered that Thompson is now owned by Smith & Wesson. In addition, the notification form on record did not include all of the waste streams that Thompson generates, ("Violation 3"). For this violation, Env-C 612.08(e) authorizes a fine of \$500.

4. Thompson failed to properly decontaminate, as required by Env-Hw 506.01(d) [was Env-Wm 506.01(d)] and 40 CFR 265.111 & 265.114, the discontinued Kolene waste rinsewater pipe which was used to convey rinsewater from the Foundry Building to the Waste Water Treatment Facility ("WWTF") ("Violation 4"). For this violation, Env-C 612.06(a) authorizes a fine of \$2,000 per event if resulting in a release of hazardous waste or a substantial threat to human health or the environment, and \$1,000 per practice for all other violations, for a potential penalty of \$1,000.

5. Thompson failed to store, as required by Env-Hw 507.01(b) [was Env-Wm 507.01(b)], one (1) 55-gallon container of hazardous waste mixed oils and one (1) 55-gallon container of hazardous waste machining sludge on an impervious surface (*i.e.*, wooden floor in the Coolant Room) ("Violation 5"). For these violations, Env-C 612.06(d) authorizes a fine of \$2,000 per non-conforming area.

6. Thompson failed to include, as required by Env-Hw 509.02(a)(1) [was Env-Wm 509.02(a)(1)], the full name of the individual conducting inspections of the hazardous waste storage areas, on the inspection checklist ("Violation 6"). For these violations, Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area.

7. Thompson failed to maintain a personnel training program and provide hazardous waste training for the following employees with hazardous waste duties, as required by Env-Hw 509.02(a)(2) [was Env-Wm 509.02(a)(2)]: no initial training for Hazardous Waste Handler Alan Yeaton and Security Personnel Mike Banville and Betty Lord; three (3) years of annual training for Waste Water Treatment Operator Stephen Behre and Security Michael Hurrinas; two (2) years of annual training for Michael Poole; four (4) years of annual training for Security Edmond Seale; and five (5) years of annual training for Alternate Emergency Coordinator Mike Haley ("Violation 7"). For these violations, 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 \$22,250.

8. Thompson failed to maintain a complete contingency plan on-site, as required by Env-Hw 509.02(a)(5) [was Env-Wm 509.02(a)(5)] ("Violation 8"). For this violation, Env-C 612.07(e) authorizes a fine of \$2,000.

9. Thompson failed to post adequate emergency information, as required by Env-Hw 509.02(b) [was Env-Wm 509.02(b)], at the nearest telephone to the main hazardous waste storage area ("Violation 9"). For this violation, Env-C 612.07(h) authorizes a fine of \$1,000 per area.

10. Thompson failed to manage, as required by Env-Hw 509.03 [was Env-Wm 509.03], one (1) 55-gallon container of hazardous waste labeled as "hazardous waste, liquid lead and chrome mixed oil and metals, D008, D007," located in the Coolant Room; one (1) 55-gallon container of hazardous waste labeled as "hazardous waste, machining sludge, D007," located in the Coolant Room; and one (1) unlabeled 5-gallon container of hazardous waste used preventative maintenance ("PM") oil, located in the Maintenance Shop, "at or near the point of generation" ("Violation 10"). For these violations, Env-C 612.07(j) authorizes a fine of \$1,000 per storage area, for a potential fine of \$2,000.

11. Thompson failed to keep closed, as required by Env-Hw 509.03(d) and Env-Hw 507.01(a)(3) [was Env-Wm 509.03(d) and Env-Wm 507.01(a)(3)], one (1) 5-gallon satellite container of hazardous waste PM used oil located in the Maintenance Shop; and four (4) 5-gallon satellite containers of hazardous waste used oil located in the Compressor Room ("Violation 11"). For these violations, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$2,000.

12. Thompson failed to mark, as required by Env-Hw 509.03(g) [was Env-Wm 509.03(g)], the one (1) 5-gallon satellite container of hazardous waste PM used oil located in the Maintenance Shop; and the four (4) 5-gallon satellite containers of hazardous waste used oil located in the Compressor Room with the words "hazardous waste" or with words describing the contents of the container ("Violation 12"). For this violation, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area, for a potential fine of \$2,000.

13. Thompson failed to conduct and document monthly inspections, as required by Env-Hw 509.03(h) [was Env-Wm 509.03(h)], of the Small Arms Misfire Ammunition satellite storage container located in the shooting range area that accumulated greater than 10 gallons of hazardous waste (“Violation 13”). For this violation, Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area.

14. Thompson failed to include all applicable EPA or state waste numbers, as required by Env-Hw 510.03(a) [was Env-Wm 510.03(a)], on the following twenty-seven (27) hazardous waste manifests:

MI9070963	NYG2898183	MI9153706
MI9691624	MAQ649442	MAQ658442
MAQ658444	MAQ654785	MAQ658159
MAQ664533	MAQ659574	001363652JJK
000155425JJK	100040824CTN	RIS0081622
MI9070763	MI9070964	MI9153828
MAK072205	MAQ640983	001366949JJK
002500677JJK	002486694JJK	003629184JJK
MI9070764	MAQ636694	MAQ63673

(“Violation 14”). For these violations, Env-C 612.04(b) authorizes a fine of \$500 per shipment, for a potential fine of \$13,500.

15. Thompson failed to close, as required by Env-Hw 1102.03(c)(1) [was Env-Wm 1102.03(c)(1)], twenty-eight (28) containers labeled “Universal Waste Lamps”; two (2) containers labeled “Universal Waste Mercury Bulbs”; and two (2) containers labeled “Universal Waste Batteries, except to add or remove universal waste (“Violation 15”). DES has determined these violations to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$480.

16. Thompson failed to dispose of, as required by Env-Hw 1102.04(b) [was Env-Wm 1102.04(b)], twenty-eight (28) containers of universal waste lamps; and multiple cathode ray tubes, within one year of the date the universal waste became a waste (“Violation 16”). DES has determined these violations to be a minor deviation from the requirements and a minor potential for harm, for which Env-C 610 specifies a fine of between \$100 and \$1,000. DES proposes a fine of \$150.

V. PAYMENT, WAIVER OF HEARING

1. For purposes of settlement of this action, DES agrees to waive fines associated with Violations 1, 3, 6, 8 through 10, 13, 15 and 16 because they are not Class I violations.
2. DES asserts that the following fines are appropriate for Violations 2, 4, 5, 7, 11, 12, and 14 because they are Class I violations:

- a. Violation 2 is a Class I violation. Thompson provided information that the Steel/Carbon Sludge and Used VHP E210 Coolant were analyzed and determined to be non-hazardous. In addition the hazardous waste determination for the Lab Pack Chemicals is a Class II violation. DES has determined that the fine be revised for failing to conduct four (4) hazardous waste determinations. DES is thus seeking a fine of \$6,000 for this violation;
- b. Violation 4 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$1,000 for this violation;
- c. Violation 5 is a Class I violation. DES has determined due to Thompson's good faith effort to comply that a 20% reduction should be applied. DES is thus seeking a fine of \$1,600 for this violation;
- d. Violation 7 is a Class I violation. DES has determined that the fine be revised for failing to provide initial training for Alan Yeaton and Stephen Behre and failing to provide one (1) year of annual training for Mike Haley. DES is thus seeking a fine of \$4,500;
- e. Violation 11 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$2,000 for this violation;
- f. The fine for Violation 12 is included in the fine sought for Violation 11; and
- g. Violation 14 is a Class I violation. The fine was initially revised to \$6,500 because of the twenty-seven (27) manifests only seventeen (17) manifests were within the previous three (3) year time period from the date of the inspection and thirteen (13) manifests were a Class I violation. Based on information from Thompson, DES determined that the fine should be revised to failing to include all applicable EPA or state waste numbers on two (2) manifests. DES is thus seeking a fine of \$1,000 for this violation.

3. Thompson agrees to pay a total fine of \$16,100 upon execution of this Administrative Fine by Consent by an authorized representative of Thompson.

4. Payment under Paragraph "V.3," shall be paid by certified or corporate check made payable to "Treasurer, State of New Hampshire" and shall be mailed to **DES Legal Unit, Attn: Legal Assistant, P.O. Box 95, Concord, NH 03302-0095.**

5. 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.

6. The parties have entered into this agreement to avoid the time and cost of litigation. By executing this Agreement, Thompson 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. Other than this enforcement action or any action that may be necessary to enforce this Agreement, DES shall pursue no further

administrative action against Thompson relative to the allegations contained herein. In any proceeding to enforce this Agreement, Thompson agrees not to challenge the validity of any provision of this Agreement.

7. In any future proceeding by DES seeking administrative fines based on alleged violations of RSA 147-A and/or the Hazardous Waste Rules, Thompson agrees that it will not seek a reduction in the fine based on Env-C 601.10(c). This Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Thompson; (ii) an admission by Thompson or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Thompson might raise in any third party proceeding.

8. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Thompson, the Director of the Waste Management Division, and the Commissioner of DES.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent 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.

Thompson/Center Arms Company, Inc.

~~COPY~~
By: William Serra, Dir. EHS
Smith & Wesson Corp.
Duly Authorized

9/23/2010
Date

~~COPY~~
By: William Lachenmeyer, V.P. Human Resources
Smith & Wesson Corp.
Duly Authorized

9/23/10
Date

Department of Environmental Services

~~COPY~~
Michael J. Wimsatt, P.G., Director
Waste Management Division

10/18/10
Date

Thomas S. Burack, Ass't Comm.
COPY
Thomas S. Burack, Commissioner
Date 10/21/10

cc: DES Legal Unit
RCRA/DB/AF

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Rochester City Manager
Robert Bishop, HWMB/DES