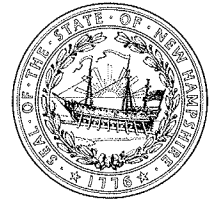


The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment*

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

Re: EPA ID No. NHD001038348

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 12-012

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. 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 main 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 NH CODE ADMIN. RULES Env-Hw 100-1100 ("the 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.
3. UPACO is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities in Nashua, New Hampshire through DES on July 17, 1981. EPA Identification No. NHD001038348 was assigned to UPACO's site located at 3 East Spit Brook Road, Nashua, New Hampshire (the "Facility").
4. On May 4, 2010, DES personnel inspected the Facility 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 Letter of Deficiency No.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

WMD 10-025 to UPACO on October 13, 2010. Based on the violations observed during the inspection, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. UPACO violated RSA147-A:4, I and Env-Hw 511.01(b) by disposing, or causing to be disposed of at an unauthorized facility, hazardous waste rags contaminated with spent solvent as a non-hazardous solid waste. ("Violation 1"). DES proposes a fine of \$2,000 per disposal event. UPACO reported that it has regularly disposed of the F005 Solvent Rags since prior to the enactment of the Resource Conservation and Recovery Act ("RCRA"). For settlement purposes only, DES proposes a fine for five (5) disposal events, for a total fine of \$10,000 for these violations.
2. UPACO failed to conduct, as required by Env-Hw 502.01, adequate hazardous waste determinations on two (2) waste streams [*i.e.*, F005 Solvent Rags and D001 P-20 Condensate] ("Violation 2"). DES proposes a fine of \$2,000 per determination not made, for a fine of \$4,000 for these violations.
3. UPACO failed to use, as required by Env-Hw 506.01, storage practices that did not pose a hazard to human health or the environment by allowing hazardous waste D001 P-20 Condensate to accumulate in a container located outside the Facility ("Violation 3"). DES proposes a fine of \$2,000 for this violation.
4. UPACO failed to document, as required by Env-Hw 509.02(a)(1), weekly inspections of the 90-day HWSA for three (3) of the required fifty-two (52) weekly inspections during the year prior to the inspection ("Violation 4"). DES proposes a fine of \$350 per inspection per area, for a fine of \$1,050 for these violations.
5. UPACO failed to maintain, as required by Env-Hw 509.02(a)(5), a complete contingency plan ("Violation 5"). DES proposes a fine of \$2,000 for this violation.
6. UPACO failed to post, as required by Env-Hw 509.02(b), a complete emergency posting at the nearest telephone to the hazardous waste storage area ("Violation 6"). DES proposes a fine of \$1,000 for this violation.
7. UPACO failed to close, as required by Env-Hw 1102.03(c)(1), two (2) boxes of universal waste lamps ("Violation 7"). DES proposes a fine of \$15 per container, for a fine of \$30 for these violations.
8. UPACO failed to mark, as required by Env-Hw 1112.04, the two (2) boxes of universal waste lamps with the words "Universal Waste – Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)" ("Violation 8"). DES proposes a fine of \$50 per container, for a fine of \$100 for these violations.

V. PAYMENT, WAIVER OF HEARING

1. For settlement purposes only, DES agrees not to seek fines associated with Violations 4 through 8 because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 1 through 3 which are Class I violations:

\$10,000 for Violation 1;

\$4,000 for Violation 2; and

\$2,000 for Violation 3.

3. For settlement purposes, DES will apply a 15% reduction to the gravity portion of the fines for Violations 1 through 3 due to UPACO's high level of cooperation in providing information and its effort to correct the violations. DES is thus seeking, and UPACO agrees to pay, a total fine of \$14,100¹ (\$16,000 Base Penalty - \$3,137 Economic Benefit = \$12,863 Gravity Penalty; \$12,863 Gravity Penalty × .85 (15% reduction) = \$10,934 Revised Gravity; \$10,934 Revised Gravity + \$3,137 Economic Benefit = \$14,071 Revised Penalty).

4. UPACO agrees to pay a portion of the fine, in the amount of \$9,850, upon execution of this Administrative Fine by Consent by an authorized representative of UPACO.

5. UPACO agrees to undertake a Supplemental Environmental Project ("SEP") and will receive credit of up to the remaining amount of the fine due, in the amount of \$4,250, by completing the SEP as described in this paragraph. The SEP will be credited at a 1:1 ratio to reduce the cash payment portion of the penalty by \$4,250, from \$14,100 to \$9,850. UPACO shall expend at least \$4,250 to have seventeen (17) employees trained and certified through the DES Hazardous Waste Coordinator Certification Program, which is established under RSA 147-A:5. The cost of an individual certification is \$250, which consists of a \$125 Annual Program Fee and a \$125 course fee. The employees designated to attend are: John Connolly, Dave Cooper, Dan Ellett, Bob Gordon, Rick Harrington, Dave Kelley, Stephanie Lauren, Dave Poirier, Dave Richard, Brian Rogers, Mike Rosin, Barbara Strickland, Liqun Sun, Nate Theriault, Frank Willwerth, Steve Zidek, and a New Film Laminates Lab Technician (to be determined). All of the employees must be first-time attendees to the DES Hazardous Waste Coordinator Certification Program. The designated attendees may be changed subject to DES approval. All of the attendees shall attend training and test for certification within six (6) months of the execution of this Agreement. UPACO must submit individual training applications and the \$4,250 in Annual Program and course fees to the Hazardous Waste Coordinator Certification Program upon execution of this Administrative Fine by Consent. Applications for training and payment information are at: http://des.nh.gov/organization/divisions/waste/hwcb/hwcs/hwccp/documents/hwc_application.doc. If any of the attendees designated in this Agreement, or subsequently approved by DES, fail to attend training or fail to test for certification within six (6) months of the execution of this Agreement, the Annual Program and course fees that have been collected will not be refunded or credited.

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

¹ Rounded from \$14,071 to the nearest unit of \$100 pursuant to the RCRA Civil Penalty Policy.

7. If any payment 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 Administrative Fine by Consent, UPACO waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

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

10. 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.

Worthen Industries, Inc., UPACO Division

~~COPY~~

By: David S. Worthen, President
Duly Authorized

5/29/12
Date

Department of Environmental Services

~~COPY~~

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

6/5/12
Date

~~COPY~~

Thomas S. Burack, Commissioner

6/11/12
Date

- cc: DES Legal Unit
RCRA/DB/AF
- ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Robert Bishop, Enforcement Manager, HWMB/DES
Nashua City Council