

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

U.S. Environmental  
Protection Agency-Reg 2  
2016 APR 14 AM 11:58  
REGIONAL HEARING  
CLERK

\_\_\_\_\_X  
IN THE MATTER OF: :  
: :  
**Kawasaki Rail Car, Inc.,** :  
: CONSENT AGREEMENT  
: AND  
Respondent. : FINAL ORDER  
: :  
Proceeding under Section 3008 : Docket No. RCRA-02-2015-7103  
of the Solid Waste Disposal :  
Act, 42 U.S.C. § 6928, as amended :  
\_\_\_\_\_X

**PRELIMINARY STATEMENT**

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq. ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of the U.S. Environmental Protection Agency, Region 2 ("EPA"), who has been duly delegated the authority to institute this action. Complainant issued a "Complaint and Notice of Opportunity for Hearing" ("Complaint") to Kawasaki Rail Car, Inc. on September 30, 2015, bearing the docket number listed above. The Complaint alleged violations of the requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order ("CA/FO") as a resolution of this proceeding without further litigation.

**EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Kawasaki Rail Car, Inc. (hereinafter "Kawasaki" and/or "Respondent").

2. Respondent owns and/or operates several buildings at and/or adjacent to 29 Wells Avenue, Yonkers, NY 10701 (hereinafter the "Facility") and engages in the assembly, rehabilitation, and fabrication (and related activities) of passenger rail cars.
3. Respondent is a "person," as defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations (6 "NYCRR") § 370.2(b).
4. In the course of normal operations, Respondent generates "solid waste," as that term is defined at 6 NYCRR § 371.1(c).
5. In the course of normal operations, Respondent generates "hazardous waste," as that term is defined at 6 NYCRR § 371.1(d).
6. Solid and hazardous wastes generated by Kawasaki include, but are not limited to waste paints, waste glues and adhesives, spent solvents, waste corrosives, gasoline waste, spent fluorescent bulbs and waste batteries.
7. Respondent has notified EPA that it generates hazardous waste at its facility and was assigned EPA Identification Number NYD982 278 160.
8. A Stipulation and Order by and between Kawasaki and the United States of America was entered on October 4, 2009 by a U.S. District Court Judge for the Southern District of New York for alleged violations of RCRA, 42 U.S.C. § § 6921-6939e.
9. On or about December 5, 2013, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, a duly authorized representative of EPA conducted an inspection of Respondent's facility described in paragraph 2 above.
10. At the time of this inspection, several dozen containers, which contained waste paints and solvents, waste corrosives, discarded gasoline and related waste unidentifiable due to a failure to label the containers or to obliterated labels, were observed in two buildings designated by Respondent as "Hazardous Waste Storage Areas". The inspector observed containers which were corroded with some evidence of leakage.
11. EPA sent to Respondent a RCRA § 3007 Information Request Letter ("IRL") dated July 8, 2014, requiring the submission to EPA of information on waste paint and other materials being stored at the facility and on the manner in which such wastes were managed.
12. Respondent submitted a response to the IRL dated August 19, 2014.
13. As a result of the inspection and the Respondent's response to the IRL, EPA alleged that Respondent had operated a hazardous waste management facility without having obtained a RCRA permit or having qualified for interim status in violation of Section 3005 of the Act, 42



U.S.C. § 6925, and 6 NYCRR § 373-1.2 and EPA issued the Complaint to Respondent citing this violation.

14. The parties have agreed to resolve this matter as provided in the Consent Agreement below.

### CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the specific factual allegations contained in the Complaint; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent shall, within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, comply with all applicable federal and state regulatory requirements for the management of hazardous waste by generators at Respondent's Facility including storing hazardous waste in containers that are labelled, kept closed, in good condition and subject to regular inspection, maintaining its facility so as to minimize the possibility of fire, explosion or release of hazardous waste or hazardous constituents and not storing hazardous waste at the facility beyond the time period allowed by 6 NYCRR Section 372.2(a)(8) for such storage.
2. Respondent shall pay a civil penalty to EPA in the total amount of **SEVENTY ONE THOUSAND ONE HUNDRED AND TWENTY DOLLARS (\$71,120)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the Treasurer, United States of America, and shall be mailed to:

**U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF KAWASAKI RAIL CAR, INC.*, and shall bear thereon the Docket

Number RCRA-02-2015-7103. Payment of the penalty must be *received* at the above address on or before forty five (45) calendar days after the Effective Date of this CA/FO (the due date). Complainant's counsel will endeavor to inform Respondent's counsel of the date when the CA/FO is filed with the Regional Hearing Clerk. This date shall be the Effective Date as set out in paragraph 12 below.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
- 6) Name of Respondent: Kawasaki Rail Car, Inc.
- 7) Case Number: RCRA-02-2015-7103.

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Stuart N. Keith, Esq.  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1635  
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.



- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
  - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
3. Complainant shall mail to Respondent (or to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
4. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
5. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
6. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
7. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
8. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

9. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or Findings of Fact or Conclusions of Law contained within these documents.
10. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
11. Each party hereto shall bear its own costs and fees in this matter.
12. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT:

**Kawasaki Rail Car, Inc.**

BY: \_\_\_\_\_

(Authorized Signature)

NAME: \_\_\_\_\_

(PLEASE PRINT)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

COMPLAINANT:

\_\_\_\_\_  
**Dore LaPosta, Director**

Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007

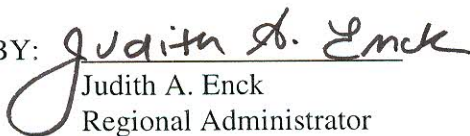
P. DURACK for D.L.

DATE: \_\_\_\_\_

Re: The Kawasaki Rail Car, Inc.  
Docket Number RCRA-02-2015-7103

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. Section 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

BY:   
Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency -  
Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 4.11.16

**Re: The Kawasaki Rail Car, Inc.  
Docket Number RCRA-02-2015-7103**

**Certificate of Service**

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2015-7103, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

Copy by Hand:

The Honorable Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

Copy by Certified Mail,  
Return Receipt Requested

Tameka Beckford-Young, Esq.  
Legal Counsel  
Kawasaki Rail Car, Inc.  
29 Wells Avenue, Building 4  
Yonkers, NY 10701

Dated:

April 14, 2016 Yone Niza