



### **Parties**

3. Complainant is the Branch Chief of the Waste Enforcement and Materials Management branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondents are Jacam Manufacturing 2013, LLC and Jacam Chemical Company 2013, LLC, which are authorized to operate under the laws of Kansas and its parent organizations, affiliates, shareholders, members, successors, predecessors, officers, directors, employees and managers.

### **Statutory and Regulatory Framework**

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondents agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

### **General Factual Background**

7. Respondents are limited liability companies authorized to conduct business within the State of Kansas. Respondents are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondents' North Facility is located at 1656 Avenue Q, Sterling, Kansas. Respondents' South Facility is located at 425 South 11<sup>th</sup> Street, Sterling, Kansas. Respondents manufacture, design, and distribute specialized chemicals for the oil and gas production and industrial markets. Respondents employ approximately 100 people.

9. On or about December 10, 2014, Respondents notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930 for operations at the North Plant. LQGs generate 1,000 kilograms per month or more of hazardous waste, or more than 1 kilogram per month of acutely hazardous waste.

10. On or about March 13, 2017, Respondents notified EPA, as an LQG for operations at the South Plant. On or about July 10, 2017, Respondents modified the notification for the South Plant to a Conditionally Exempt Small Quantity Generator (CESQG). CESQGs generate up to 100 kilograms per month of hazardous waste or less than 1 kilogram of acutely hazardous waste.

11. On or about May 29, 2014, the EPA observed Respondents disposing of a solid waste down an Underground Injection Control (UIC) well. The well is called the Matlock Lease Well #2.

12. The EPA conducted sampling of the solid waste being disposed down the Matlock Lease Well #2. The results of this sampling confirmed that the solid waste Respondents were disposing down the UIC well was hazardous waste. The injected material contained the following: Acetone, Benzene, 2-Butanone (MEK), Ethylbenzene, Hexane, Isobutylbenzene, Isopropylbenzene, 4-Methyl-2-pentanone (MIBK), Naphthalene, n-Propylbenzene, Toluene, 1,2,4 Triethylbenzene, 1,3,5 Triethylbenzene, m-&/or p-Xylene, and o-Xylene.

13. The Matlock Lease Well #2 is an authorized Class 2 injection well which has been permitted by the Kansas Corporation Commission (KCC). This Class 2 injection well was permitted for salt water injection. The KCC permit restricted injection of salt water into the Matlock Well Lease #2 to the specific oil and gas well sites identified in Matlock's permit.

14. Respondents are not the permit holder for the Matlock Lease Well #2, and therefore not authorized to dispose anything down the Matlock Lease Well #2.

15. Respondents are assigned the following EPA ID Numbers: KSR 209006924 (North Facility) and KSR 193502449 (South Facility).

### Violations

16. Complainant hereby states and alleges that Respondents have violated RCRA and the federal regulations promulgated thereunder, as follows:

**Count 1**

**Failure to Conduct Hazardous Waste Determination**

17. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.

18. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at K.A.R. 28-31-262, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

19. At the time of the EPA sampling event on May 29, 2014, Respondents had not conducted a waste determination on the solid wastes being injected into the Matlock Injection Well #2.

20. Respondents' failure to perform a hazardous waste determination on the above-referenced solid waste stream is a violation of Section 3001 of RCRA, 40 C.F.R. § 262.11 and K.A.R. 28-31-262.

**Count 2**

**Operating as a Treatment, Storage or Disposal Facility  
Without a RCRA Permit or RCRA Interim Status**

21. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 15 above, as if fully set forth herein.

22. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a RCRA permit.

23. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term "disposal" as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

24. Pursuant to Kan. Stat. Ann. § 65-3437(a), no person shall construct, modify or operate a hazardous waste facility or otherwise dispose of hazardous waste within the state without a permit from the secretary.

25. EPA observed Respondents disposing of hazardous waste down the Matlock Lease Well #2.

26. Respondents do not have a permit to operate a hazardous waste treatment, storage or disposal facility at any location.

27. Respondents' operation of a hazardous waste disposal facility at the Matlock Lease Well #2 is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and Kan. Stat. Ann. § 65-3437(a).

### **CONSENT AGREEMENT**

28. Respondents and EPA agree to the terms of this Consent Agreement and Final Order and Respondents agree to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

29. Respondents admit the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

30. Respondents neither admit nor deny the factual allegations set forth in this Consent Agreement and Final Order.

31. Respondents waive their right to contest any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

32. Respondents and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

33. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Full payment of the penalty proposed in this CAFO shall only resolve Respondents' liability for the violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

35. Full payment of the penalty proposed in this CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, except as provided herein. This CAFO does not waive, extinguish or otherwise affect Respondents' obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

36. The effect of settlement described in Paragraph 34 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 37, below, of this Consent Agreement and Final Order.

37. Respondents certify that by signing this Consent Agreement and Final Order that to the best of their knowledge, Respondents' facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, and all regulations promulgated thereunder.

38. The undersigned representative of Respondents certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondents to it.

39. Respondents agree that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondents shall pay a penalty of Sixty-Seven Thousand, Five Hundred Dollars (\$67,500) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

40. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

41. Respondents consent to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty cited above.

42. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

43. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

#### **Effective Date**

44. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

#### **Reservation of Rights**

45. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondents in an amount not to exceed Fifty-Seven

Thousand Three Hundred Ninety-One Dollars (\$57,391) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

46. Complainant reserves the right to take enforcement action against Respondents for any violations of RCRA and its implementing regulations not addressed herein and to enforce the terms and conditions of this Consent Agreement and Final Order.

47. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

48. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

49. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

50. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondents have fully implemented the actions required in the Final Order.

### **FINAL ORDER**

Pursuant to the authority of Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondents will pay a civil penalty of Sixty-Seven Thousand, Five-Hundred Dollars (\$67,500).

2. Payment of the penalty shall be made by cashier's or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier's or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection  
Agency Fines and Penalties  
Combined Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

#### **B. Compliance Actions**

5. Respondents shall take the following actions within the time periods specified, according to the terms and conditions specified below.

6. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondents shall submit documentation to EPA, in accordance with Paragraph 8 below, demonstrating that an accurate hazardous waste determination has been performed for each recurring solid waste stream generated at Respondents' North Plant facility. This documentation will include, but is not limited to, the following information:

- a. A description of the waste stream which includes a description of the process or processes that generated the waste;
- b. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
- c. A determination of whether or not the waste has been listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261; and
- d. A determination of whether or not the waste is identified in 40 CFR Part 261 Subpart C. To determine whether the waste fails any of the



characteristics in Subpart C, the waste may need to be analyzed using one of the methods found in Subpart C of Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA.

7. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondents shall submit the following documentation to EPA, in accordance with Paragraph 8 below:
- a. Updated soil sample results at the spill on north side of Building #5 at Jacam Manufacturing 2013 LLC – North. Samples will test for total volatile organic compounds, total semi-volatile organic compounds, and total metal compounds.
  - b. A narrative description with supporting documentation, including representative photographs, that universal waste containers are properly managed pursuant to 40 C.F.R. §§ 273.13, 273.14, and 273.15.
  - c. Updated contingency plan pages showing: i) a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where such equipment is required; ii) provide the location and a physical description of each item on the list; iii) outline the capabilities of each item; iv) updated emergency coordinator list; and v) any other updates. 40 C.F.R. § 265.52.
  - d. Documentation demonstrating the updated contingency plan is provided to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. 40 C.F.R. § 265.53(b).
  - e. Documentation demonstrating: i) the training provisions at 40 C.F.R. § 265.16 are met (such as an agenda of topics covered), ii) attendance sign-in sheets which demonstrate all the facility personnel who occupy a position at the facility related to hazardous waste management received hazardous waste training in November or December 2017; and iii) the Health, Safety & Environment Manager received appropriate training pursuant to 40 C.F.R. § 265.16(a)(2).

8. Respondents shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph to the following address:

Kevin D. Snowden, AWMD/WEMM  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

### **C. Parties Bound**

9. The Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

For Complainant:

U.S. ENVIRONMENTAL PROTECTION AGENCY


12/15/17

Date

  
\_\_\_\_\_  
Mary Goetz, Branch Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

12/14/17

Date

  
\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

For Respondents:

JACAM MANUFACTURING 2013, LLC

12/6/17  
Date


  
Signature

Stephen Tuszyński  
Printed Name

CFO  
Title

JACAM CHEMICAL COMPANY 2013, LLC

12/6/17  
Date

  
Signature

Stephen Tuszyński  
Printed Name

CFO  
Title

IT IS SO ORDERED.

This Final Order shall become effective upon filing.

Dec. 6, 2017

Date

Karina Borrromeo

Karina Borrromeo  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kelley Catlin  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7

Copy via Email to Respondent:

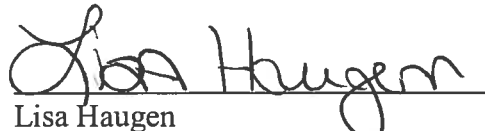
David Tripp, Esq. and Brittany Barrientos, Esq.  
Stinson Leonard Street LLP

In addition, I certify that I sent via Email to the State of Kansas:

William L. Bider, Director  
Bureau of Waste Management  
Kansas Department of Health and Environment

Ken Powell  
Compliance and Enforcement, Waste Reduction, and Assistance Section  
Kansas Department of Health and Environment

Dated this 6 day of December, 2017.

  
\_\_\_\_\_  
Lisa Haugen  
Regional Hearing Clerk