

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2020-0011
)	
AAA-Galvanizing – Dixon, Inc.)	Proceeding to Commence and Conclude
(dba AZZ Galvanizing – Dixon,)	an Action to Assess a Civil Penalty
Dixon, Illinois))	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent.)	42 U.S.C. § 6928(a)
)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is AAA-Galvanizing – Dixon, Inc., dba AZZ Galvanizing – Dixon (hereinafter, “AZZ”), a corporation organized under the laws of the State of Delaware and doing business in the State of Illinois. Respondent is a subsidiary of AZZ, Inc., a corporation organized under the laws of the State of Texas.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 - 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003 and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal

program when the Administrator finds that the state program meets certain conditions.

14. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$99,681 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent was and is a "person" as defined by 35 Ill. Adm. Code § 720.110, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is an "owner" or "operator," as those terms are defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10, of a facility located at 310 East Progress Drive, Dixon, Illinois, 61021 (Facility).

19. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or

disposing of hazardous waste.

20. Respondent's Facility is a "facility," as that term is defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10.

21. At all times relevant to this CAFO, Respondent used hydrochloric acid to prepare steel parts for galvanizing in a molten kettle of zinc.

22. The process of preparing steel with hydrochloric acid generated "acid sludge," which Respondent collected in containers and stored in the hazardous waste storage area of the Facility.

23. At all times relevant to this CAFO, Respondent held acid sludge, a discarded material, for temporary periods in containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

24. On waste profile forms maintained by AZZ, Respondent identified its acid sludge waste as a hazardous waste, and stated on those forms that the acid sludge waste possessed the hazardous characteristics of corrosivity, chromium toxicity and lead toxicity (EPA Hazardous Waste Codes D002, D007 and D008).

25. Respondent stored, transported, disposed of, or otherwise handled its acid sludge waste in "containers," as that term is defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10.

26. At all times relevant to this CAFO, Respondent's acid sludge waste was a "solid waste" as that term is defined under 35 Ill. Adm. Code § 721.102 and 40 C.F.R. § 261.2.

27. At all times relevant to this CAFO, Respondent's acid sludge waste was a "hazardous waste" as that term is defined under 35 Ill. Adm. Code § 721.103 and 40 C.F.R. § 261.3.

28. At all times relevant to this CAFO, Respondent's holding of acid sludge waste in containers constituted hazardous waste "storage" as that term is defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10.

29. Respondent is a "generator" as that term is defined under 35 Ill. Adm. Code § 720.110 and 40 C.F.R. § 260.10.

30. Respondent generated and managed hazardous waste at the Facility after November 19, 1980.

31. On January 28, 2020, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

32. At all times relevant to this CAFO, the State of Illinois had not issued a permit authorizing Respondent to treat, store, or dispose of hazardous waste at its Facility.

33. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

34. On or about June 21, 2000, Respondent submitted a Hazardous Waste Notification, dated June 15, 2000, to U.S. EPA for the Facility.

35. In its Hazardous Waste Notification dated June 15, 2000, Respondent identified itself as a generator.

36. At all times relevant to this CAFO, Respondent generated during each calendar month more than 1000 kg of hazardous waste at the Facility.

Storage of Hazardous Waste Without a Permit or Interim Status

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as though set forth in this paragraph.

38. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R.

Part 270 and 35 Ill. Adm. Code Part 703, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

39. Pursuant to 35 Ill. Adm. Code § 722.134, however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 Ill. Adm. Code § 722.134.

40. A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of 35 Ill. Adm. Code Part 724 and the permit requirements of 35 Ill. Adm. Code §§ 703.121, 703.180, and 705.121, unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

41. At all times relevant to this CAFO, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

42. At the time of the inspection (January 28, 2020), Respondent had at least four (4) 55-gallon containers of acid sludge in storage at the Facility; each of these containers bore a Hazardous Waste label with an accumulation date of June 1, 2019.

43. At the time of the inspection (January 28, 2020), Respondent had at least one (1) 55-gallon container of acid sludge in storage at the Facility; this container bore a Hazardous Waste label with an accumulation date of July 1, 2019.

44. At the time of the inspection, Respondent had stored at least four (4) 55-gallon containers of acid sludge on site for 249 days without obtaining or applying for a hazardous waste treatment, storage or disposal permit.

45. At the time of the inspection, Respondent had stored at least one (1) 55-gallon container of acid sludge on site for 219 days without obtaining or applying for a hazardous waste treatment, storage or disposal permit.

46. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

47. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 Ill. Adm. Code § 722.134, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

48. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 Ill. Adm. Code §§ 703.121, 703.180, and 705.121 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

49. On or about February 5, 2020, Respondent shipped the containers of hazardous waste described above for offsite disposal.

Civil Penalty

50. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is Twenty-Five Thousand Eight-Hundred Twenty-One Dollars (\$25,821). In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,821 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state *In the Matter of AZZ Galvanizing – Dixon, Inc.* and the docket number of this CAFO.

52. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Todd Brown
Land Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
brown.todd@epa.gov and
r5lecab@epa.gov

James Cha
Office of Regional Counsel
U.S. EPA, Region 5
cha.james@epa.gov

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount

overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

56. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: brown.todd@epa.gov (for Complainant), and JasonPence@AZZ.com (for Respondent).

57. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

58. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

60. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

61. The terms of this CAFO bind Respondent, its successors, and assigns.

62. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorney's fees in this action.

64. This CAFO constitutes the entire agreement between the parties.

AZZ Galvanizing – Dixon, Inc., Respondent

6/23/20
Date

Todd Bella
Todd Bella
Vice President, Eastern Operations
AZZ, Inc.

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.07.10
08:49:06 -05'00'

Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
AZZ Galvanizing – Dixon, Inc.
Docket No. RCRA-05-2020-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.07.13
16:00:24 -05'00'

Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5