

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
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In the Matter of:

ABC Recycling LLC,

Respondent.

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Docket No. RCRA-07-2018-0330

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and ABC Recycling LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Kansas Statute Annotated 65-3431, Sections 3001, 3002 and 3005 of RCRA, 42 U.S.C §§ 6921, 6922 and 6925, and Kansas regulations which incorporate by reference certain federal regulations for the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

Parties

3. The 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. The Respondent is ABC Recycling LLC, a Kansas limited liability company authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator of EPA to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator of EPA to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 7 U.S.C. § 6903(15), defines "person" as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines "facility" to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

13. The regulation at 40 C.F.R. § 260.10 defines “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.

14. “Solid waste” is defined at 40 C.F.R. § 261.2.

15. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

16. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

17. 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 Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder.

18. When 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 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).

19. 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 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$97,229 for violations that occur after November 2, 2015, and are assessed after January 15, 2018. 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), the Complainant and Respondent 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

20. Respondent is a corporation and authorized to conduct business within the State of Kansas. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent owns and operates a facility located at 815 E. Gilbert in Wichita, Kansas (“facility”). Respondent is a metals salvage and recycler.

22. Respondent has never notified EPA or the Kansas Department of Health and Environment that it is a generator of hazardous waste.

23. On or about February 18, 2016 and April 4-5, 2017, EPA inspectors conducted RCRA Compliance Evaluation Inspections (“inspections”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection reports and the information provided during the inspections by facility personnel, it was determined that Respondent was operating, at the time of the inspections, as a generator of hazardous waste and a used oil generator.

24. At the time of the inspections, Respondent had on site approximately 5,292 gallons of various paints, stain, roof coatings, adhesives, and other similar materials, carrying waste codes D001, D005, D006, D007, D008, D011, and D035, and stored in a waste-like manner in various containers of various sizes throughout the facility property. These are solid and hazardous wastes as defined in 40 C.F.R. §§ 260.2 and 261.3. At the time of the inspections, Respondent also had onsite approximately 420 gallons of used oil and/or fuel stored in a waste-like manner in various containers of various sizes throughout the facility property. These are solid wastes as defined in 40 C.F.R. § 261.2.

25. Respondent has been assigned EPA ID Number KSR128857800.

Violations

26. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Failure to Conduct Hazardous Waste Determinations

27. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 262.11, incorporated by 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.

29. At the time of the inspections, Respondent had on site the solid waste streams described in paragraph 24 above and had not conducted hazardous waste determinations on any of the solid waste streams. In or about July of 2018, Respondent caused the hazardous waste described in paragraph 24 to be sent to a licensed hazardous waste treatment, storage and disposal facility.

30. Respondent's failure to perform hazardous waste determinations on the above-referenced solid waste streams is a violation of 40 C.F.R. § 262.11, incorporated by K.A.R. 28-31-262.

Count 2
Failure to Comply with Use Oil Regulations

31. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

Failure to label used oil containers

32. The regulations at 40 C.F.R. § 279.22(c)(1), incorporated by K.A.R. 28-31-279, require used oil generators to label or clearly mark containers and above ground tanks used to store used oil at generator facilities with the words "Used Oil."

33. At the time of the inspections, Respondent failed to label or clearly mark four 55-gallon drums and seven 5-gallon containers of used oil.

34. Respondent's failure to label the containers of used oil described above is a violation of 40 C.F.R. § 279.22(c)(1), incorporated by K.A.R. 28-31-279.

Failure to respond to a release of used oil

35. The regulations at 40 C.F.R. § 279.22(d), incorporated by K.A.R. 28-31-279, require used oil generators, upon detection of a release of used oil to the environment, to stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials, and if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

36. At the time of the inspections, releases of used oil were observed on the west side of Respondent's facility.

37. Respondent's failure to stop the release, contain the released used oil, and clean up and manage properly the released used oil and other materials, as described above, is a violation of 40 C.F.R. § 279.22(d), incorporated by K.A.R. 28-31-279.

CONSENT AGREEMENT

38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

39. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and performance of the compliance actions described below.

40. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

42. The EPA has considered the seriousness of the violations and any good faith efforts to comply with the applicable requirements pursuant to Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), and has determined that the appropriate penalty for the violation(s) is \$122,308. However, ability to pay is considered a mitigating factor in EPA's RCRA Civil Penalty Policy (June 2003). Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein for a monetary penalty of zero dollars (\$0).

Compliance Actions

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

44. Within thirty (30) days of the Effective Date of this Consent Agreement and Final

Order, Respondent shall provide the EPA with:

- (a) copies of all manifests related to the removal from the facility of the solid waste streams described in paragraph 24 above; and
- (b) documentation reflecting the actual costs incurred by Respondent related to the removal from the facility of the solid waste streams described in paragraph 24 above.

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

Ed Buckner, AWMD/WEMM
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

46. This Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

47. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

48. Respondent certifies by the signing of this Consent Agreement that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

49. This Consent Agreement and Final Order 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. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

50. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions 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 Respondent in an amount not to exceed Fifty-Eight Thousand Five Hundred Sixty-Two Dollars (\$58,562) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

51. 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.

52. 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 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.

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

General Provisions

54. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

55. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the 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.

56. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

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

58. 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.

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

COMPLAINANT:

U.S. Environmental Protection Agency

9/25/2018
Date

John V. Collier

John Smith, Acting Branch Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

9/25/18
Date

Britt Bieri

Britt Bieri
Office of Regional Counsel

RESPONDENT:

ABC Recycling LLC

9-19-18
Date


Signature

MICHAEL D MARKS
Printed Name

CEO
Title

FINAL ORDER

Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Sept. 27, 2018
Date

CERTIFICATE OF SERVICE

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

Copy via email to Complainant:

Britt Bieri

Copy via first class mail to Respondent:

ABC Recycling LLC
815 East Gilbert
Wichita, Kansas 67211

Copy via email to Respondent's attorney:

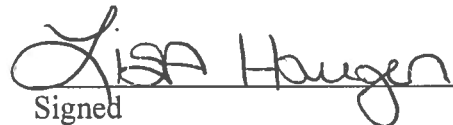
Robert Kaplan
rkaplan@klendalaw.com

Copy 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 29th day of September, 2018.


Signed _____