

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

Received by
EPA Region 7
Hearing Clerk

In the Matter of:)
)
Bobalee, Inc.) **Docket No. RCRA-07-2023-0072**
Laurens, Iowa)
EPA ID Number: IAD000153601)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Bobalee, Inc. (“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 Section 3008(a) 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 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 Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, the standards applicable to generators of hazardous waste (40 C.F.R. Part 262), and the standards applicable to universal waste management (40 C.F.R. Part 273).

Parties

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Bobalee, Inc., a corporation authorized to operate under the laws of Iowa.

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 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925, 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. Parts 262 and 273.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator 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.

8. 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.

9. Section 1004(15) of RCRA, 42 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.

10. 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).

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

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

13. 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.

14. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

15. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the 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.

16. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. 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 \$109,024 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. 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), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), 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

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

18. Respondent owns and operates a facility located at 137 North East Street, Laurens, Iowa (“facility”). Respondent manufactures welded hydraulic and pneumatic cylinders and employs approximately 130 people at this location.

19. On or about April 21, 2021, Respondent notified EPA, pursuant to 40 C.F.R. § 262.18, as a Small Quantity Generator (SQG) of hazardous waste.

20. On or about February 24 and October 20, 2021, EPA issued two RCRA information request letters (hereinafter “IRLs”) to evaluate the hazardous waste management practices at Respondent’s facility. Based on EPA’s review of Respondent’s multiple responses to the IRLs (herein after “Respondent’s IRL Responses”), it was determined that Respondent was operating, at the time of the IRLs, as a Small Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

21. At the time of the IRLs, waste paint was present and generated on a monthly basis. Respondent’s waste paint is a solid and hazardous waste as defined at 40 C.F.R. § 261.2

and 261.3. The waste paint carries the following hazardous waste codes: F003, F005, D001, D007, D008, and D035.

22. Respondent has been assigned the following EPA ID Number: IAD000153601.

Violations

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

Count 1

Failure to Notify EPA of Hazardous Waste Activity

24. Complainant hereby incorporates the allegations contained in Paragraphs 17 through 22 above, as if fully set forth herein.

25. The regulation at 40 C.F.R. Part 262.18(a), states that a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from EPA.

26. The regulation at 40 C.F.R. Part 262.18(b), states that a generator who has not received an EPA identification number must obtain one by applying to the Administrator using EPA Form 8700-12. Upon receiving the request, the Administrator will assign an EPA identification number to the generator.

27. Prior to the issuance of the IRLs, EPA determined that EPA Form 8700-12 had not been submitted to EPA for initial notification.

28. Respondent confirmed its status as an SQG for the previous five years in its IRL response.

29. Respondent's failure to provide initial notification in order to receive an EPA identification number for hazardous waste as a SQG prior to offering hazardous waste for transportation and disposal is a violation of 40 C.F.R. § 262.18.

Count 2

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

30. Complainant hereby incorporates the allegations contained in Paragraphs 17 through 22 above, as if fully set forth herein.

31. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal

of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

32. At the time of the inspection, Respondent did not have a permit or interim status.

Generator Requirements

33. The regulation at 40 C.F.R. § 262.16(b) states that an SQG may accumulate hazardous waste on-site for no more than one hundred eighty (180) days without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270, or the notification requirements of sections 3010 of RCRA provided all the conditions for exemption set forth at 40 C.F.R. § 262.16 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions for exemption:

Labeling and marking of containers

34. The regulation at 40 C.F.R. § 262.16(b)(6)(i)(A)-(C) states that an SQG must mark or label its containers with:

- a. the words “Hazardous Waste.”
- b. an indication of the hazards of the contents (*i.e.*, ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard; or a chemical hazard label consistent with the National Fire Protection Association code 704; and
- c. the date upon which each period of accumulation begins is clearly visible for inspection on each container.

35. As part of Respondent’s IRL Responses, photographs depicted hazardous waste accumulation containers without the words “Hazardous Waste,” without any labeling or marking with an indication of the hazards of the contents, or the date upon which accumulation began.

Preparedness and prevention – required aisle space

36. The regulation at 40 C.F.R. § 262.16(b)(8)(v) states that an SQG must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

37. As part of Respondent’s IRL Responses, photographs depicted a hazardous waste accumulation area without adequate aisle space to allow for the unobstructed movement of personnel or equipment.

Preparedness and prevention – arrangements with local authorities

38. The regulation at 40 C.F.R. § 262.16(b)(8)(vi)(A) states that an SQG must attempt to make arrangements with the local police department, fire department, or other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility.

39. The regulation at 40 C.F.R. § 262.16(b)(8)(vi)(B) states that an SQG shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

40. Based on Respondent's IRL Responses, at the time of the IRLs, Respondent failed to adequately make arrangements with local authorities and failed to document any attempts.

Preparedness and prevention – posting emergency information

41. The regulation at 40 C.F.R. § 262.16(b)(9)(ii)(A)-(C) states that an SQG must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste: (a) the name and emergency telephone number of the emergency coordinator; (b) the location of fire extinguishers and spill control material, and, if present, fire alarm; and (c) the telephone number of the fire department, unless the facility has a direct alarm.

42. At the time of the IRLs, emergency information was not posted next to telephones or in areas directly involved in the generation and accumulation of hazardous waste.

Satellite Accumulation

43. The regulation at 40 C.F.R. § 262.15(a) states that a generator may accumulate as much as fifty-five (55) gallons of non-acute hazardous waste or either one quart of liquid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or 1 kg (2.2 lbs) of solid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in containers at or near any point of generation where wastes are initially accumulated which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, provided that all of the conditions for exemption in this section are met. The Respondent failed to comply with the following condition for exemption for satellite accumulation:

44. The regulation at 40 C.F.R. § 262.15(a)(5)(i)-(ii) states that a generator must mark or label its satellite accumulation containers with the words "Hazardous Waste" and with an indication of the hazards of the contents (i.e. ignitable, corrosive, reactive, toxic).

45. As part of Respondent's IRL Responses, photographs depicted satellite accumulation containers without the words "Hazardous Waste" and without any labeling or marking with an indication of the hazards of the contents.

46. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 33 through 45 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 3
Failure to Comply with Universal Waste Management Requirements

47. Complainant hereby incorporates the allegations contained in Paragraphs 17 through 22 above, as if fully set forth herein.

48. The regulation at 40 C.F.R. § 273.14(e) require small quantity handlers of universal waste to clearly label or mark each lamp or container or package in which such lamps are contained with one of the following phrases: "Universal Waste—Lamp(s)" or "Waste Lamp(s)," or "Used Lamp(s)."

49. As part of Respondent's IRL Responses, photographs depicted two boxes of Universal Waste – Lamps in the universal waste storage area that were neither correctly labeled nor marked with the words, "Universal Waste—Lamp(s)" or "Waste Lamp(s)," or "Used Lamp(s)."

50. Respondent's failure to properly label the universal waste lamp containers described above is a violation of 40 C.F.R. § 273.14(e).

CONSENT AGREEMENT

51. 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.

52. 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, performance of the compliance actions described below.

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

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

55. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *benner@gomaco.com*.

Penalty Payment

56. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-six thousand five hundred thirty-four dollars (\$26,534), as set forth below.

57. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

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

58. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kelley Catlin, Attorney
catlin.kelley@epa.gov.

59. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and 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. 31 U.S.C. § 3717(e)(2).

Compliance Actions

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

61. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a Compliance Report to EPA. The Compliance Report shall include the following:

- a. A narrative description with supporting documentation of Respondent's per month hazardous waste generation rate.
- b. A narrative description with supporting documentation, including photographs, to demonstrate all hazardous waste accumulation containers and satellite accumulation containers are properly managed pursuant to 40 C.F.R. §§ 262.16(b)(6)(i)(A)-(C) and 262.15(a)(5)(i)-(ii).
- c. Photographic demonstration that hazardous waste containers are properly managed to provide adequate aisle space pursuant to 40 C.F.R. § 262.16(b)(8)(v).
- d. A narrative description with supporting documentation, including photographs, that all universal waste containers are properly managed pursuant to 40 C.F.R. §§ 273.13, 273.14, and 273.15.
- e. Documentation verifying universal waste containers are timely and properly shipped off-site.

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

Kevin Snowden, RCRA Section
Chemical Branch
Enforcement and Compliance Assurance Division
snowden.kevin@epa.gov.

Effect of Settlement and Reservation of Rights

63. Full payment of the penalty proposed in this Consent Agreement 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.

64. 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.

65. Respondent certifies by the signing of this Consent Agreement and Final Order that 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.

66. Full payment of the penalty proposed in this Consent Agreement 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.

67. 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 Sixty-Five Thousand Six Hundred Sixty-Six Dollars (\$65,666) 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.

68. 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.

69. 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.

70. Nothing contained in 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

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

72. 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 filing 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.

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

74. Tax Identification. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii) and 26 C.F.R. § 1.162-21(b)(2), performance of actions set forth in Paragraph 61 are restitution, remediation, or required to come into compliance with the law.

75. 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.

76. 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.

77. 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

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date

Kelley Catlin
Office of Regional Counsel

Date

RESPONDENT:

Bobalee, Inc.



Signature

March 31, 2023

Date

Grant Godbersen

Printed Name

V.P. of manufacturing / Bobalee

Title

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(For EPA use only.)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Bobalee, Inc., EPA Docket No. RCRA-07-2023-0072, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kelley Catlin
Office of Regional Counsel
catlin.kelley@epa.gov

Kevin Snowden
Enforcement and Compliance Assurance Division
snowden.kevin@epa.gov

Copy via Email to Respondent:

Sean Benner
Manufacturing Engineering Manager
Gomaco, Inc.
121 E. State Hwy. 175
Ida Grove, Iowa 51445
benner@gomaco.com

Copy via Email to the State of Iowa:

Ed Tormey, Acting Administrator
Environmental Services Division
Iowa Department of Natural Resources
Ed.tormey@dnr.iowa.gov

Mike Sullivan, Chief
Contaminated Sites Section
Iowa Department of Natural Resources
Michael.sullivan@dnr.iowa.gov

Dated this _____ day of _____, _____.

Signed