

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

IN THE MATTER OF:	§	
Mauser USA, LLC.	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
	§	
RESPONDENT	§	USEPA Docket No. RCRA-06-2020-0906

---

**CONSENT AGREEMENT AND FINAL ORDER**

1. The U.S. Environmental Protection Agency, Region 6 (EPA or Complainant), and Mauser USA, LLC, doing business as Mauser Packaging Solutions, (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), by entering into this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

2. Pursuant to Section 3008(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(2), the state of Texas has been notified of this action.

3. For the purposes of these proceedings, Respondent admits to the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations contained herein.

4. Respondent waives its right to contest the allegations and its rights to appeal the

proposed final order contained in this CAFO.

5. This CAFO resolves only those violations which are alleged herein.

6. Respondent consents to the issuance of this CAFO, consents to the assessment and payment of the civil penalty stated herein, and consents to any specific compliance order in this CAFO.

## II. JURISDICTION

7. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(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(g), and in accordance with the Consolidated Rules of Practice.

8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the state of Texas received authorization to administer and enforce a hazardous waste program (49 FR 48300).<sup>1</sup> Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA to enforce the provisions of an authorized state program and the regulations promulgated thereunder.

## III. PARTIES

9. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of EPA.

10. Respondent is a Delaware company authorized to conduct business in the state of Texas.

---

<sup>1</sup> On December 26, 1984, the state of Texas received final authorization for its base Hazardous Waste Management Program, effective on February 7, 1985 (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations refer to Title 30 of the Texas Administrative Code (TEX. ADMIN. CODE), as amended, effective on February 26, 2018. 80 Fed. Reg. 80672 (December 28, 2015); 40 C.F.R. § 272.2201: Texas State-Administered Program: Final Authorization. Referenced found within this Consent Agreement and Final Order are to the EPA authorized version of the TEX. ADMIN. CODE and citations may vary slightly from the Texas published version of the TEX. ADMIN. CODE. The corresponding C.F.R. citations are also provided.

#### IV. STATUTORY AND REGULATORY FRAMEWORK

11. 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.

12. Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6940, commonly referred to as “Subtitle C” (Hazardous Waste Management), requires the Administrator to promulgate regulations to establish requirements applicable to facilities that generate, transport, treat, store, or dispose of hazardous waste. Pursuant to the authorities provided in Subtitle C of RCRA, 42 U.S.C. §§ 6921 – 6940, the EPA promulgated the regulations found at 40 C.F.R. Parts 260 – 279. These regulations are applicable to generators and transporters of hazardous waste, and to treatment, storage, and disposal facilities. Generally, these regulations prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” The Texas hazardous waste regulatory program is found at Title 30, Chapter 335 of the Texas Administrative Code (TEX. ADMIN. CODE).

13. 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 Subtitle C of RCRA. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Act 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 before November 2, 2015, and to \$74,552 for violations that occur after November 2, 2015, and are assessed after February 6, 2019.

**V. EPA FACTUAL ALLEGATIONS AND  
CONCLUSIONS OF LAW**

14. Respondent is a company, legal entity, and “person” as that term is defined by 30 TEX. ADMIN. CODE § 3.2(25) [40 C.F.R. § 260.10].

15. Respondent is the owner and operator of a “facility,” as defined by 30 TEX. ADMIN. CODE § 335.1(60) [40 C.F.R. § 260.10], located at: 4004 Homestead Road, Houston, Texas 77028 (the Facility).

16. During the period of July 2019 through December 2019, the EPA conducted a review of information relevant to Respondent’s compliance with RCRA and the implementing regulations at the Facility (the EPA Investigation).

17. As a result of the EPA Investigation, the EPA determined that the process at the Facility produced “solid waste” streams, as defined by 30 TEX. ADMIN. CODE § 335.1(140) [40 C.F.R. § 260.10], including spent batteries, lamps, and paint and paint-related waste (PPRW). These solid waste streams are “hazardous waste,” as defined by 30 TEX. ADMIN. CODE § 335.1(70) [40 C.F.R. § 261.3], and “universal waste,” as defined by 30 TEX. ADMIN. CODE § 335.1(165) [40 C.F.R. § 260.10].

18. Because the process at the Facility produced universal waste, Respondent is, and at all times referred to herein was, a “universal waste handler,” as defined by 30 TEX. ADMIN. CODE § 335.1(166) [40 C.F.R. § 260.10].

19. As a result of the EPA Investigation, the EPA determined that Respondent accumulated at least 5,000 kilograms of universal waste (batteries, lamps, and PPRW) at the Facility.

20. From the time Respondent accumulated 5,000 kilograms or more of universal waste at the Facility, Respondent was a “Large Quantity Handler of Universal Waste,” as defined by 30

TEX. ADMIN. CODE § 335.261(b)(16)(C) [40 C.F.R. § 273.9], and subject to the requirements of the Texas Universal Waste Rule, 30 TEX. ADMIN. CODE § 335.261 and 262 [40 C.F.R. § 273, Subpart C].

## VI. EPA ALLEGED VIOLATIONS

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

### Count 1

#### *Failure to Notify as a Large Quantity Handler*

22. The facts stated in paragraphs 14 through 20 above are herein incorporated.

23. The regulation at 30 TEX. ADMIN. CODE § 335.261(a) [40 C.F.R. § 273.32(a)(1)] requires large quantity handlers of universal waste to submit written notification of universal waste management to the executive director before meeting or exceeding the 5,000 kilogram accumulation limit.

24. From February 2006 to March 2016, Respondent submitted 12 hazardous waste activity notifications to the Texas Commission on Environmental Quality that did not include written notification of Respondent's universal waste management at the Facility.

25. Failure to accurately include notification of Respondent's universal waste management in the hazardous waste activity notifications submitted to the Texas Commission on Environmental Quality is a violation of 30 TEX. ADMIN. CODE § 335.261(a) [40 C.F.R. § 273.32(a)(1)].

### Count 2

#### *Treatment of Universal Waste*

26. The facts stated in paragraphs 14 through 20 above are herein incorporated.

27. The regulation at 30 TEX. ADMIN. CODE § 335.261(a) [40 C.F.R. § 273.31(b)] prohibits

large quantity handlers of universal waste from treating universal waste.

28. At the time of the EPA Investigation, Respondent was treating PPRW, a universal waste, when drying the PPRW in a burn-off oven.

29. Respondent's treatment of universal waste is a violation of 30 TEX. ADMIN. CODE § 335.261(a) [40 C.F.R. § 273.31(b)].

## VII. COMPLIANCE ORDER

30. Respondent is hereby ORDERED and agrees to comply with the requirements of RCRA, and the regulations promulgated thereunder. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered, and agrees, to undertake the following compliance actions as expeditiously as possible, but in no event later than sixty (60) days from the Effective Date, as a condition of settlement:

- a. Respondent shall assess its solid waste streams at the Facility to determine the accurate waste codes and develop and implement standard operating procedures (SOPs) to ensure that Respondent is operating the Facility in compliance with RCRA, the regulations promulgated thereunder, and the Texas Administrative Code. The SOPs should include, but are not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous waste; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing manifests; and (e) meeting the requirements of the land disposal restrictions.
- b. Respondent shall accurately and adequately comply with Section 3010 notification requirements, where applicable, for the Facility and within the prescribed time period, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.
- c. Respondent shall cease treating universal waste, unless in accordance with RCRA and

applicable federal and state regulations, including permitting requirements.

### **Certification and Submissions**

31. Within 90 days of the Effective date, Respondent shall certify to the completion of the above compliance actions and provide documentation demonstrating completion to the EPA. The documentation provided shall include a copy of the developed SOPs.

32. All submissions to the EPA required by this Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

33. All submissions to the EPA required by this Order shall be sent to you:

Fred Deppe  
Enforcement and Compliance Assurance Division  
Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDSR)  
Dallas, Texas 75270-2101  
deppe.fred@epa.gov

### **CONSENT AGREEMENT**

34. 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.

35. 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.

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

37. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing.

38. Respondent and EPA agree to bear their respective costs and attorneys' fees.

Respondent waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated thereunder.

#### **Penalty Payment**

39. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Four Thousand, Six Hundred Seventy-Five Dollars (\$34,675), as set forth below.

40. 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>.

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

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102; and

Fred Deppe  
Enforcement and Compliance Assurance Division  
Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDSR)  
Dallas, Texas 75270-2101  
deppe.fred@epa.gov

42. 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 percent (6%) 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).

#### **Effect of Settlement and Reservation of Rights**

43. 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.

44. 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.

45. 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. In any action by EPA or the United States to enforce the terms herein, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this Consent Agreement and Final Order and agrees not to contest the validity of this Consent Agreement and Final Order or its terms or conditions.

46. 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.

47. 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.

48. 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**

49. 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.

50. 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 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

52. 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.

53. The EPA and Respondent agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

*mills.clarissa@epa.gov*

To Respondent:

*mmurphy@gibsondunn.com*

54. 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.

**RESPONDENT:  
MAUSER USA, LLC**

April 1, 2020  
Date



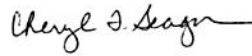
\_\_\_\_\_  
Signature

Kimberly A. Miller  
Printed Name

Vice President, Environmental, Health & Safety  
Title

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

April 6, 2020  
Date



Digitally signed by CHERYL  
SEAGER  
Date: 2020.04.06 13:59:44 -05'00'

\_\_\_\_\_  
Cheryl T. Seager, Director  
Enforcement and Compliance  
Assurance Division  
U.S. Environmental Protection Agency, Region 6

**FINAL ORDER**

Pursuant to Sections 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.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Rucki, Thomas

Digitally signed by Rucki, Thomas  
DN: cn=Rucki, Thomas,  
email=Rucki.Thomas@epa.gov  
Date: 2020.04.07 09:14:07 -05'00'

Thomas Rucki  
Regional Judicial Officer

4/7/2020

Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

mills.clarissa@epa.gov

Copy via Email to Respondent:

mmurphy@gibsondunn.com

Dated this 7<sup>th</sup> day of April, 2020.

**CLARISSA  
MILLS**  
Signed \_\_\_\_\_

Digitally signed by CLARISSA MILLS  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=CLARISSA MILLS,  
0.9.2342.19200300.100.1.1=680010036534  
51  
Date: 2020.04.07 12:21:53 -05'00'