

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

FILED

2008 SEP 24 AM 8:14

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

IN RE:)
)
Jim Jonas, Inc.,) DOCKET NO. EPCRA-09-2008- 0009
)
)
Respondent.) CONSENT AGREEMENT AND
) FINAL ORDER PURSUANT TO
) SECTIONS 22.13 AND 22.18
_____)

This administrative proceeding is initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986, (hereinafter referred to as "EPCRA"), the regulations promulgated thereunder at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. Complainant is the Director, Communities and Ecosystems Division, EPA Region IX. The Administrator of the United States Environmental Protection Agency has delegated the authority to file this action under EPCRA to the Regional Administrator Region IX by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX has further delegated the authority to file this action under EPCRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9 ("EPA") and Jim Jonas, Inc. ("JJI" or "Respondent") have conferred for the purpose of settlement and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, in

accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order ("CAFO") will simultaneously commence and conclude this matter.

A. APPLICABLE STATUTES AND REGULATIONS

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for the submission of information relating to the release of toxic chemicals under Section 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

2. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b) and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and the State in which the facility is located a toxic chemical release inventory reporting form when the following three criteria are met:

(i) The facility has ten or more full-time employees;

(ii) The facility is in one of the following Standard Industrial Classification Codes: 10 (except 1011, 1081, and 1094); 12 (except 1241); 20 through 39; 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. § 6921 *et seq.*); 5169; 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).

(iii) The facility manufactured, processed, or otherwise used threshold quantities of one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

3. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform Toxic Chemical Release Inventory Reporting Form (hereinafter referred to as a

"Form R") for facilities that are subject to the reporting requirements of Section 313.

4. Section 313(a) and (b) of EPCRA, 42 U.S.C. § 11023(a) and (b), and 40 C.F.R. § 372.30(d) provide that each Form R for activities involving a toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used during a calendar year must be submitted on or before July 1 of the next year.

B. EPA's ALLEGATIONS

5. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7). Respondent's total annual sales are over \$10 million, and Respondent has more than 10 employees. Respondent at all times relevant to this action owned and operated a petroleum bulk storage facility located at 16445 Main Street, Lower Lake, California (hereinafter the "Facility").

6. At all times relevant to this action, Respondent was an owner and operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3, which is located in Lower Lake, California. The Facility has 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3. The Facility is classified in NAICS Code 424710, which corresponds to a SIC code to which reporting requirements apply. Reporting requirements apply to facilities with NAICS Code 424710 pursuant to 40 C.F.R. § 372.23(c).

7. At the Facility, Respondent "processes" 1,2,4 trimethylbenzene, toluene, xylene (mixed isomers), naphthalene, polycyclic aromatic compounds (PACs), n-hexane, benzene, and ethylbenzene, as the term "processes" is defined in 40 C.F.R. § 372.3. 1,2,4 trimethylbenzene, toluene, xylene (mixed isomers), naphthalene, polycyclic aromatic compounds (PACs), n-hexane, benzene, and ethylbenzene are each toxic chemicals listed at 40 C.F.R. § 372.65. In calendar years 2005, and 2006, Respondent "processed" 1,2,4 trimethylbenzene, toluene, xylene (mixed

isomers), naphthalene, n-hexane, benzene, and ethylbenzene in quantities exceeding the established threshold of 25,000 pounds provided by 40 C.F.R. § 372.25(a). In calendar years 2005, and 2006, Respondent “processed” polycyclic aromatic compounds (PACs) in quantities exceeding the established threshold of 100 pounds provided by 40 C.F.R. § 372.28(a)(2).

8. Subsection 313(b) of EPCRA and 40 C.F.R. § 372.22 require that an owner and operator of a facility subject to the requirements of Subsection 313(b) and 40 C.F.R. § 372.22, that is a facility that has 10 or more full-time employees, which is in Standard Industrial Classification Code 37, and which manufactures, processes, or otherwise uses one or more toxic chemicals listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under Subsection 313(f) and 40 C.F.R. §§ 372.25 and 372.28, must submit a Form R for each such chemical for the applicable reporting year. The requirements of EPCRA Section 313, 42 U.S.C. § 11023, therefore, apply to the Facility. Respondent, therefore, was required to submit complete and correct Form Rs for 1,2,4 trimethylbenzene, toluene, xylene (mixed isomers), naphthalene, polycyclic aromatic compounds (PACs), n-hexane, benzene, and ethylbenzene to the EPA Administrator and to the State of California on or before July 1, 2006 (for reporting year 2005) and July 1, 2007 (for reporting year 2006).

9. Respondent did not submit such Form Rs to EPA and the State of California on or before the applicable July 1 deadline. Respondent’s failure to submit correct Form Rs for 1,2,4 trimethylbenzene, toluene, xylene (mixed isomers), naphthalene, polycyclic aromatic compounds (PACs), n-hexane, benzene, and ethylbenzene for reporting year 2005 by July 1, 2006 and for reporting year 2006 by July 1, 2007, was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

C. RESPONDENT'S ADMISSIONS

10. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.B. of this CAFO; (iii) consents to any and all conditions specified in this CAFO; (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.D of this CAFO; (v) waives any right to contest the allegations contained in this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

D. CIVIL ADMINISTRATIVE PENALTY

11. In order to resolve this matter without further litigation, Respondent consents to the assessment of a penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.B. of the CAFO and under the Act, as alleged in Section I.B. of the CAFO. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

12. The civil penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and sent by certified mail, return receipt requested, to:

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

The check should note the case title and docket number, and a transmittal letter, indicating Respondent's name, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Mariela Lopez
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

13. In the event that Respondent fails to pay in full the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that the civil penalty is late, which shall become due and payable upon EPA's written demand.

14. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

15. For the purposes of state and federal income taxation, Respondent shall not claim a

deduction for any civil penalty payment made pursuant to this CAFO.

E. RETENTION OF RIGHTS

16. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

17. This CAFO constitutes the entire agreement between the Respondent and EPA. This CAFO is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.B. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations specifically alleged in Section I.B. of this CAFO.

F. COMPLIANCE WITH EPCRA

18. In signing this CAFO, Respondent certifies, under penalty of law, that, to the best of its knowledge, it has complied with all EPCRA requirements, and specifically Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, at all facilities under Respondent's control.

G. ATTORNEYS' FEES AND COSTS

19. Except as set forth in Paragraph 14 above, each party shall bear its own costs, fees, and disbursements in this action.

H. EFFECTIVE DATE

20. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the

Regional Judicial Officer, is filed.

I. BINDING EFFECT

21. The provisions of this CAFO shall be binding on Respondent and on Respondent's successors, and assigns.

22. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

23. Complainant and Respondent consent to the entry of this CAFO without further notice.

JIM JONAS INC.:

September 5, 2008
DATE

Printed Name:

JAMES E. JONAS

Title:

President

JIM JONAS INC.

FOR THE COMPLAINANT U.S. EPA:

SEPT. 19, 2008
DATE

Enrique Manzanilla
Enrique Manzanilla, Director
Communities and Ecosystems Division
U.S. Environmental Protection Agency
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/23/08

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-⁰⁹~~9~~-2008-~~000~~ **0009**) against Jim Jonas, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. James Jonas
President
Jim Jonas, Inc.
16445 Main Street
Lower Lake, CA 95457

Certified Mail No. 7007 3020 0000 9806 7876



Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date SEP 24 2008