

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

FILED
2016 DEC 13 AM 10:59
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
E. W. JOHNSON COMPANY INC.	§	Consent Agreement and Final Order
Lewisville, Texas	§	Docket No. RCRA-06-2017-0909
	§	
	§	
RESPONDENT	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, E. W. Johnson Company Inc. (“EWJ”), and concerns the facility located at 49 N. Kealy St., Lewisville, Texas 75075 (the “Facility”).

2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. The CAFO resolves only those violations that are alleged herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II. JURISDICTION

7. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation established under the laws of the State of Texas, and owns and operates the Facility located at 1495 N. Kealy St., Lewisville, Texas 75075.

10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Tex. Admin. Code § 3.2(25)¹, [40 C.F.R. § 260.10].

11. Respondent owns and operates a Facility and engages in the manufacture, assembly and finishing of machined, sheet metal parts and assemblies for aircraft and electronic industries.

12. During the period of November 14, 2014 through December 2015, EPA conducted a RCRA investigation and record review ("Investigation") of Respondent's performance as a

¹ All citations to the EPA authorized Texas hazardous waste program refer to Title 30 of the Texas Administrative Code (T.A.C.) as amended, effective through December 31, 2009. 77 Fed. Reg. 71344, 71352 (November 30, 2012); 40 C.F.R. Part 272, Appendix A, Texas. The corresponding Code of Federal Regulation (C.F.R.) citations are also provided.

generator of hazardous waste, which included a RCRA 3007 Information Request issued to Respondent.

13. During the Investigation, EPA discovered that Respondent, at a minimum, generated the following waste:

- i. Characteristic hazardous waste identified as D002 (corrosive); and
- ii. Characteristic hazardous waste identified as D007 (toxic - Chromium).

14. The waste streams identified in Paragraph 13 are hazardous wastes as defined in 30 Tex. Admin. Code § 335.1(69), [40 C.F.R. §§ 261.21, 261.22, 261.24 and 261.31].

15. From the investigation, EPA determined that during the calendar years 2012, through 2015, Respondent generated and offered for transport and treatment the hazardous waste streams identified in Paragraph 14 in quantities that exceed the threshold amount of 1,000 kilograms (kg) of hazardous waste per month, which qualifies Respondent for the large quantity generator status as established under 30 Tex. Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. § 262].

16. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 30 Tex. Admin. Code § 335.1(59), [40 C.F.R. §260.10]; and a “hazardous waste management unit” within the meaning of 30 Tex. Admin. Code § 335.1(72), [40 C.F.R. § 260.10].

17. Respondent is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 Tex. Admin. Code §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

18. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 Tex. Admin. Code, Chapter 335, Subchapters C and F, [40 C.F.R. §§ 262 and/or 270].

Claim 1: Notification Requirements

19. The allegations in Paragraphs 1-18 are alleged and incorporated herein by reference.

20. Within the meaning of 30 Tex. Admin. Code § 335.1 and 40 C.F.R. § 260.10, EWJ is a “generator” of hazardous waste.

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

22. Respondent did not file with the Administrator or the authorized State an adequate and subsequent notification of its hazardous waste activities at the facility during the periods in 2012 through 2014 to reflect its generation of hazardous waste exceeding the large quantity generator threshold in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), see also [30 TEX.ADMIN.CODE § 335.6(c)] and [40 C.F.R. §262.12(b)].

Claim 2: Storage of Hazardous Waste without a Permit

23. The allegations in Paragraphs 1-22 are alleged and incorporated herein by reference.

24. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d), [40 C.F.R. § 262.34(d)], a generator of 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, which is a small quantity generator (SQG), may accumulate hazardous waste on site for 180 days or less without a permit or without interim status provided that the generator complies with all the requirements of 30 TEX.ADMIN.CODE § 335.69(d), [40 C.F.R. § 262.34(d)].

25. The exemption at 30 TEX.ADMIN.CODE § 335.69(e), [40 C.F.R. § 262.34(e)] is not applicable to Respondent for its Lewisville facility.

26. Pursuant to 30 TEX.ADMIN.CODE § 335.69(f), [40 C.F.R. § 262.34(f)], a generator who generates greater than 100 kilograms but less than 1,000 kilogram of hazardous waste in a calendar month, who accumulates hazardous waste for more than 180 days, and for whom the exemption at 30 TEX.ADMIN.CODE § 335.69(e), [40 C.F.R. § 262.34(e)] is not applicable is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265, 267 and the Permit requirements of part 270, unless the generator has been granted an extension to the 180-day period.

27. During the period of September 15, 2010, to July 27, 2012, Respondent accumulated 5818 kg (12,800 lbs) of hazardous waste on site at its Lewisville facility, having the hazardous waste characteristics of toxicity D002 (corrosive), and D007 (Chromium) beyond the 180 days allowed for an SQG.

28. Respondent was not granted an extension to the 180-day period, for the hazardous waste described in Paragraph 45, pursuant to 30 TEX.ADMIN.CODE § 335.69(f), [40 C.F.R. § 262.34(f)].

29. For the time periods described in Paragraph 32, Respondent stored hazardous waste at its Lewisville facility in violation of 30 TEX.ADMIN.CODE Subchapters C and F, [40 C.F.R. Parts 264, 265, 267, and 270].

IV. COMPLIANCE ORDER

30. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has reviewed all environmental requirements (Federal and State) that are applicable to EWJ as generator of hazardous waste

and has developed and implemented a RCRA Compliance Plan designed to ensure that Respondent is meeting the regulations applicable to a generator, including but not limited to: (a) making hazardous waste determinations; (b) creating and keeping the requisite records; (c) managing its hazardous wastes; and (d) reporting and offering for transportation and treatment its hazardous waste;

- B. Respondent shall certify that it has accurately complied with its RCRA Section 3010 Notification; and
- C. Respondent shall provide, with its certification, a copy of Respondent's RCRA Compliance Plan as described in subparagraph A above.

31. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of FWJ and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by the CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance I Section (6EN-H1)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Adolphus Talton

V. TERMS OF SETTLEMENT

A. Penalty Provisions

32. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, Respondent's good faith efforts to comply with the applicable regulations, and EPA's assessment of Respondent's ability to pay, it is ordered that Respondent be assessed a civil penalty of **Fifty Seven Thousand One Hundred and Ninety Two Dollars (\$57,192.00)**.

33. Respondent shall pay the assessed penalty in thirty-six (36) equal payments of One Thousand Five Hundred Eighty Eight Dollars and Sixty Seven Cents (\$1,588.67). The first payment is due sixty (60) days after the effective date of this CAFO, with subsequent payments due every 30 days thereafter, until the civil penalty is paid in full. The payments shall be made payable to the Treasurer of the United States, and in the manner set forth in Paragraph 34 below.

34. The following are Respondent's options for transmitting the penalties:

Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

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

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of E. W. Johnson Company Inc., Docket No. RCRA-06-2017-0909) shall be documented on or within your chosen method of payment to ensure proper credit.

35. The Respondent shall send a simultaneous notice of such payment to the following:

Lorcna S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Mark Potts, Chief
Waste Enforcement Branch (6EN-II)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Adolphus Talton

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty payment's due dates, as described above in paragraph 33, and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

37. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically 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 pursuant to those Acts.

C. Termination and Satisfaction

38. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 32. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

39. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

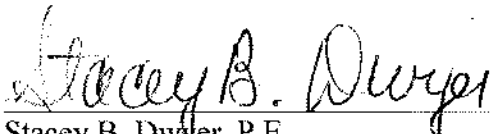
Date: 12-6-16



James Harris
President
E. W. Johnson Company Inc.

FOR THE COMPLAINANT:

Date: 12/12/2016



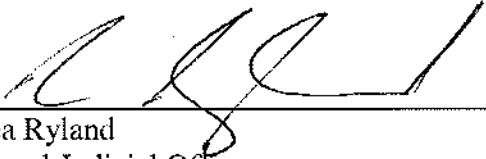
Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. 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. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

12/13/16




Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7014015000024545224

Mr. Jerry Sikkema
E. W. Johnson Company Inc.
10236 US Highway 181 South
San Antonio, TX 78223



Ms. Lori Jackson
Paralegal