



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2019 FEB 14 PM 12: 56

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: RCRA-08-2019-0001

IN THE MATTER OF:

TESTAMERICA LABORATORIES, INC.

FINAL ORDER

RESPONDENT

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 14th DAY OF February, 2019.


Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2019 FEB 14 PM 12:56

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	
)	Docket No. RCRA-08-2019-0001
TestAmerica Laboratories, Inc.)	
4955 Yarrow Street)	CONSENT AGREEMENT
Arvada, CO 80002)	
)	
)	
)	
)	
Respondent.)	
)	

The U.S. Environmental Protection Agency, Region 8 (EPA), and Respondent, TestAmerica Laboratories, Inc. (TestAmerica), by their undersigned representatives, hereby consent and agree as follows:

I. INTRODUCTION

1. This proceeding is subject to EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*, 40 C.F.R. part 22.
2. This Consent Agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
3. The State of Colorado (State) has been authorized to administer a hazardous waste program in lieu of the federal hazardous waste program in Colorado under section 3006(b) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6926(b). The requirements of the State's authorized program are found at 6 CCR 1007-3.
4. EPA retains jurisdiction and authority to initiate an enforcement action in the State under section 3008 of RCRA, 42 U.S.C. § 6928. *See* section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. EPA has given notice of this action to the State as required by section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. PARTIES BOUND

6. This Agreement, upon incorporation into a final order by the Regional Judicial Officer, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Agreement certifies that they are authorized to execute and legally bind the party they represent to this Agreement.

III. STATEMENT OF THE PARTIES

7. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations.
8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
9. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree entry of this Agreement and its incorporation into a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
10. This Agreement, upon incorporation into a final order and full satisfaction by the parties, is a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged in section V of this Agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Respondent is a "person" as defined in 6 CCR 1007-3 § 260.10 [40 C.F.R. § 260.10].
12. Respondent is the "owner" and/or "operator" of a "facility" located at 4955 Yarrow Street in Arvada, Colorado (Facility) as those terms are defined in 6 CCR 1007-3 § 260.10 [40 C.F.R. § 260.10].
13. Respondent operates an analytical laboratory performing classical chemistry analyses at the Facility.
14. Respondent is a "generator" of "hazardous waste," as those terms are defined in 6 CCR 1007-3 § 260.10 [40 C.F.R. § 260.10].
15. On June 12, 2017, inspectors with EPA conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility. EPA's findings were documented in a July 28, 2017, report sent to Respondent.
16. During the CEI on June 12, 2017, EPA reviewed certain of Respondent's RCRA compliance documentation, including biennial reports, submitted under 6 CCR 1007-3 § 262.41(a) [40 C.F.R. § 262.41(a)], land disposal notifications, and hazardous waste manifests.
17. Based on the CEI on June 12, 2017, the EPA's review of materials submitted by Respondent as follow-up to the CEI on June 12, 2017, June 15, 2017, June 22, 2017, June 23, 2017, July 4, 2017, January 15, 2018, March 13, 2018, April 30, 2018, May 9, 2018, and May 10, 2018; and an in-person meeting held on August 24, 2017, the EPA identified 11 shipments of waste with EPA waste codes D002, D004, D005, D006, D007 and D008, to a treatment, storage, and disposal (TSD) facility for incineration in a combustion unit. These shipments were initiated under manifest

#007020107, dated February 27, 2014; manifest #007500245, dated March 20, 2014; manifest #007500552, dated May 1, 2014; manifest #007502690, dated May 15, 2014; manifest #007020348, dated July 31, 2014; manifest #007020440, dated August 14, 2014; manifest #007787345, dated November 5, 2014; manifest #008345671, dated May 13, 2015; manifest #008861486, dated September 16, 2015; manifest #009092049, dated November 11, 2015 and manifest #011010774, dated November 15, 2017.

18. Appendix XI to 6 CCR 1007-3 part 268 [40 C.F.R. part 268] (Appendix XI) identifies metal bearing wastes prohibited from dilution in a combustion unit according to 6 CCR 1007-3 § 268.3(c) [40 C.F.R. § 268.3(c)]. D004, D005, D006, D007 and D008 wastes are listed in Appendix XI.

V. FINDINGS OF VIOLATION

19. Dilution in a combustion unit of the hazardous waste codes listed in Appendix XI is prohibited. 6 CCR 1007-3 § 268.3(c) [40 C.F.R. § 268.3(c)].
20. Based on the above Findings of Fact and Conclusions of Law, EPA finds Respondent's shipments of hazardous waste on February 27, 2014, March 20, 2014, May 1, 2014, May 15, 2014, July 31, 2014, August 14, 2014, November 5, 2014, May 13, 2015, September 16, 2015, November 11, 2015, and November 15, 2017, that contained metal bearing wastes listed in appendix XI of 6 CCR 1007-3 part 268 [40 C.F.R. part 268, app. XI], to a TSD for incineration in a combustion unit violated 6 CCR 1007-3 § 268.3(c) [40 C.F.R. § 268.3(c)].

VI. TERMS OF SETTLEMENT

A. Compliance

21. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent agrees to take all necessary actions to ensure that restricted hazardous wastes are not diluted or combusted in violation of 6 CCR 1007-3 § 268.3(c) [40 C.F.R. § 268.3(c)] and to ensure future compliance with the requirements and prohibitions of 6 CCR 1007-3 part 268 [40 C.F.R. part 268]. Within 30 days of the date of the final order, Respondent shall notify Linda Jacobson of the EPA in writing at the address provided in paragraph 23 below of the actions it has taken to ensure compliance.

B. Civil Penalty

22. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and after consideration of the facts of this case, EPA has determined that a civil penalty of \$60,000 is appropriate to settle this matter.
23. Respondent consents and agrees to pay a civil penalty in the amount of \$60,000 in the manner described below:
- a. Payment must be in a single payment of \$60,000, due no later than 30 calendar days from the date of the final order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. Payment must be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>. The check or other payment must designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to “Treasurer, United States of America.”

Copies of the check or record of payment must be sent to:

Linda Jacobson
U.S. Environmental Protection Agency (8ENF-RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

24. If the payment is not received by the specified due date interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury under 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (*e.g.*, on the 1st late day, 30 days of interest will have accrued).
25. In addition, a handling charge of \$15 will be assessed the 31st day from the date of the final order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty will be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
26. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

VII. GENERAL PROVISIONS

27. This Agreement contains all terms of the settlement agreed to by the parties.
28. This Agreement does not relieve Respondent of its obligation to comply with RCRA and its implementing regulations.
29. Any failure by Respondent to comply with this Agreement will constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

30. Nothing in this Agreement should be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this Agreement.
31. The parties agree to forward the executed Agreement to the Regional Judicial Officer in accordance with 40 C.F.R. § 22.18(b)(2) with a request that it be incorporated into a final order.
32. Each party will bear its own costs and attorney's fees in connection with this matter.
33. This Agreement, upon incorporation into a final order and full satisfaction by the parties, will be a complete and full resolution of Respondent's liability for federal civil penalties for the violations and facts alleged herein.

The foregoing Consent Agreement In the Matter of TestAmerica Laboratories, Inc. is Hereby Stipulated, Agreed, and Approved.

TESTAMERICA LABORATORIES, INC.,

Rachel Brydon Jannetta
Signature

31, January, 2019
Date

Printed Name: RACHEL BRYDON JANNETTA
Title: PRESIDENT
Address: 109 SCHREINER DR. NORTH WALES, PA 19454
Respondent's Federal Tax Identification Number: 23-2919996

RESPONDENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,

[Signature]
Signature

2/11/2019
Date

Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

United States Environmental Protection Agency
1595 Wynkoop Street, 8ENF
Denver, Colorado 80202-1129

COMPLAINANT

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **TESTAMERICA LABORATORIES, INC.; DOCKET NO.: RCRA-08-2019-0001** was filed with the Regional Hearing Clerk on February 14, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on February 14, 2019, to:

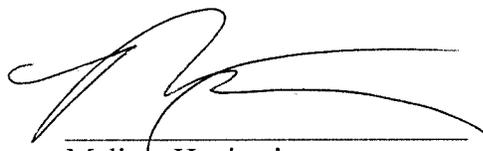
Respondent

Rachel Brydon Jannetta
President
TestAmerica Laboratories, Inc.
109 Schreiner Drive
North Wales, Pennsylvania 19454

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

February 14, 2019



Melissa Haniewicz
Regional Hearing Clerk