

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

2020 FEB -6 PM 12: 08

In the Matter of:)
)
Platte Valley Energetics, LLC,)
)
Respondent) **Docket No. RCRA-07-2020-0060**
)
)
_____)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Platte Valley Energetics, LLC (“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 Sections 3008(a) and (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(a) and (g), 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 Nebraska Revised Statute 81-1505(13), Nebraska Administrative Code Title 128, and Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and the standards applicable to generators of hazardous waste set forth in 40 C.F.R. § 262.

Parties

3. Complainant is Director of the Enforcement and Compliance Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Platte Valley Energetics, LLC, a corporation authorized to operate under the laws of Nebraska.

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. Part 262.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the EPA Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the EPA 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.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the EPA Administrator 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.

10. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the State of Nebraska was initially granted final authorization to administer and enforce the RCRA hazardous waste management program on January 24, 1985, effective February 7, 1985 (50 FR 3345). Portions of Nebraska's hazardous waste program has been updated and re-authorized periodically since that time. Nebraska has adopted the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, 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 pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

11. Nebraska Administrative Code, Title 128, Ch. 1, 103 defines a “person” as an individual; partnership; limited liability company; association; public or private corporation;

trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

12. Nebraska Administrative Code, Title 128, Ch. 1, 052.01 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).

13. Nebraska Administrative Code, Title 128, Ch. 1, 125 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. Nebraska Administrative Code, Title 128, Chapters 2 and 3 set forth the methods for determining and defining “Solid Waste” and “Hazardous Waste.”

15. Nebraska Administrative Code, Title 128, Ch. 1, 060 defines "Generator" as any person, by site, whose act or process produces hazardous waste identified or listed in Nebraska Administrative Code, Title 128, Chapter 3 or whose act first causes a hazardous waste to become subject to regulation.

16. Nebraska Administrative Code, Title 128, Ch. 1, 085 defines "Large quantity generator" as a generator who generates in a calendar month, a total quantity of hazardous waste that is greater than or equal to 1000 kilograms.

17. 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 Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustments 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 \$97,229 for violations that occur after November 2, 2015, and are assessed after January 15, 2018. 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), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), 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

18. Respondent is a limited liability company and authorized to conduct business within the State of Nebraska. Respondent is a “person” as defined in Nebraska Administrative Code, Title 128, Ch. 1, 103.

19. Respondent owns and operates a facility is located at 8318 West Old Potash Hwy, Alda, Nebraska (“facility”). Respondent is a wholly owned subsidiary of Hornady, Inc. a manufacturer of ammunition for small arms. At this facility, Respondent manufactures primers

for ammunition produced by Hornady, Inc. and employs between 15 and 20 people at this facility.

20. On or about March 14, 2016, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

21. On or about October 25 and 27, 2017 an inspector from EPA Region 7 conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste.

22. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at Nebraska Administrative Code, Title 128, Chapters 2 and 3:

- a) Waste sludge from deactivating and cleaning production and mixing equipment used to formulate explosive compounds. The sludge is a D008 characteristic and K046 listed hazardous waste.
 - b) Off-spec primers, which are not suitable for use in the manufacture of ammunition. These off-spec primers are deactivated and manifested offsite for disposal at a hazardous waste disposal facility as D005 and D008 hazardous waste.
 - c) Fired primer waste, which resulted from test firings. These are managed as a D008 hazardous waste and manifested offsite for disposal at a hazardous waste disposal facility.
 - d) Pre-mix Lab Waste used to formulate the explosive compound accumulated in a 3-gallon bucket that was closed and labeled as dry pre-mix scrap. The material was being managed as a D005 hazardous waste.
 - e) Spent varnish which is used to impart color on parts of the primer for identification purposes. The spent varnish is managed as hazardous waste.
23. Respondent has been assigned the NDEQ/EPA ID Number NER000512426.

Violations

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

Count 1

Operating as a Treatment, Storage or Disposal Facility

Without a RCRA Permit or RCRA Interim Status

25. Complainant hereby incorporates the allegations contained in Paragraphs 18 through 23 above, as if fully set forth herein.

26. Section 3005 of RCRA, 42 U.S.C. § 6925, Nebraska Revised Statute 81-1505(13) 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.

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

Generator Requirements

28. The regulations at Nebraska Administrative Code Title 128 Ch. 10, 004.01 state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in Nebraska Administrative Code Title 128 Ch. 10, 004.01A-H are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to close satellite accumulation container

29. The regulations at Nebraska Administrative Code Title 128 Ch. 10, 005.01A and 01B, Per Ch. 10, 004.01A2, allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

30. At the time of the inspection, the inspector observed one 55-gallon container of K046 sludge in the satellite accumulation area was open.

Failure to label and date hazardous waste accumulation containers

31. The regulations at Nebraska Administrative Code, Title 128, Ch. 10, 004.01G require generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

32. At the time of the inspection, the inspector observed the 3-gallon plastic bucket of off-spec primers in 15% NaOH solution located along the west wall of building X12 in the primer production area with the words "Hazardous Waste."

33. The regulations at Nebraska Administrative Code, Title 128 Ch. 10 004.01401F and C.F.R. § 262.34(a)(2) require generators to clearly mark the date upon which each period of accumulation began on each container.

34. At the time of the inspection, the inspector observed one 3-gallon and one 5-gallon plastic buckets of off-spec primers in 15% NaOH solution located in the hazardous waste storage area without accumulation start dates marked on the containers.

Failure to conduct weekly hazardous waste inspections

35. Pursuant to Nebraska Administrative Code, Title 128 Ch. 10, 004.01A4, the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

36. At the time of the inspection, it was noted by the inspector that four 55 gallon drums containing K046 sludge was in a storage area that was separate from the facility's hazardous waste storage area. When questioned about weekly inspections of this location as required, the facility representative stated that this location was not inspected.

Failure to prepare a written contingency plan

37. The regulations at Nebraska Administrative Code, Title 128, Ch. 10, 004.01H require that the regulations at Nebraska Administrative Code, Title 128, Ch. 18 regarding contingency plans be met.

38. Pursuant to Nebraska Administrative Code, Title 128 Ch. 10, Ch. 18, the owner or operator must prepare a contingency plan which describes arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.

39. At the time of the inspection, Respondent had implemented elements of a contingency plan, but failed to formally prepare a written contingency plan as required by Nebraska Administrative Code, Title 128 Ch. 10 Ch., 18, which is a failure to comply with the regulations at Nebraska Administrative Code, Title 128, Ch. 10, 004.01H.

Failure to provide required hazardous waste training

40. The regulations at Nebraska Administrative Code, Title 128, Ch. 10, 004.01H require that the regulations at Nebraska Administrative Code, Title 128, Ch. 19 regarding personnel training be met.

41. Pursuant to Nebraska Administrative Code, Title 128 Ch. 19, 001, 002 and 003, facility personnel involved in the management of hazardous waste must successfully complete a specified hazardous waste training program within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. As part of this program, these facility personnel must receive refresher training annually.

42. At the time of the inspection, the facility had no training in place for personnel whose positions relate to hazardous waste management, as required by Nebraska Administrative Code, Title 128 Ch. 10, 004H and Ch. 19, 001, 002 and 003, which is a failure to comply with the regulations at Nebraska Administrative Code, Title 128, Ch. 10, 004.01H.

43. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 25 through 42 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.

CONSENT AGREEMENT

44. 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) waives any right to contest the allegations set forth herein; and
- (g) waives its rights to appeal the Final Order accompanying this Consent Agreement.

45. 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.

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

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

Penalty Payment

48. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Five Thousand Dollars (\$5,000) as set forth below.

49. 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>.

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

51. 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).

Supplemental Environmental Project

52. In response to the violations of the RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

53. Respondent shall complete the following SEP: purchase a self-cleaning dewatering filter drum for the Respondent's facility with such specifications as indicated on the attached Exhibit A (ALAR Engineering Corporation Proposal 17046). The purchase price of the dewatering filter drum is \$39,820 as shown on Exhibit A. Respondent shall cause the aforementioned filter drum to be installed at its facility, but any costs incurred for installation design, drawings, engineering construction, shop production/manufacturing, shipping, and receiving, of this equipment shall not be counted toward, or included within, this SEP. The SEP shall cost Thirty-Nine Thousand Eight Hundred Twenty Dollars (\$39,820.00), which is the amount that will be credited toward the SEP if that amount is expended and the SEP successfully completed. Respondent agrees that the SEP shall be completed within twelve (12) months of the Effective Date of this Consent Agreement and Final Order.

54. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

55. Within sixty (60) days after completion of the SEP, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 58 below. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 59 below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented.
- (b) Description of any problems encountered in implementation of the projects and the solution thereto;
- (c) Description of the specific environmental resulting from implementation of the SEP; and
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

56. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

57. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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, I believe that 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.

58. The SEP Completion Report shall be submitted on or before the due date specified above to:

Edwin Buckner
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

59. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide

comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

60. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

61. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$39,820.00;
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct the equipment purchase price of \$39,820 incurred in performing the SEP described herein; and
- (g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 53.

62. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$39,000 minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
 - iii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- (c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 51 herein.
- (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

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 to the best of its knowledge, it is now presently in compliance with all requirements of Nebraska Administrative Code, Title 128, the violations of which were alleged in this Consent Agreement and Final Order.

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 Fifty-Seven Thousand Three Hundred Ninety-One Dollars (\$57,391) 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 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

71. 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.

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 the filing of the Final Order 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. 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.

75. 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.

76. 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

2/4/20
Date

Wendy Luter
for David C. Cozad, Director
Enforcement and Compliance Assurance Division

2/4/2020
Date

Erin Weekley
for Raymond C. Bosch
Office of Regional Counsel

RESPONDENT:

PLATTE VALLEY ENERGETICS, LLC

12/19/2019
Date


Signature

Matthew Spencer
Printed Name

Compliance Director
Title

FINAL ORDER

Pursuant to Section 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.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Feb. 6, 2020
Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Raymond C. Bosch
bosch.raymond@epa.gov

Copy via Email to Respondent:

Austin L. McKillip
Attorney for Respondent
amckillip@clinewilliams.com

Copy via first class mail to:

Austin L. McKillip
Cline Williams Wright Johnson & Oldfather, L.L.P.
233 South 13th Street
1900 US Bank Bldg.
Lincoln, NE 68508

Copy via Email to the State of Nebraska

Dated this 6th day of February 2020
~~December, 2019.~~


Signed
for Lisa Hauge
Region 7
Hearing Clerk