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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA 09-2008- 00 1 0
)	
Johnson Laminating and Coating, Inc.)	DETERMINATION OF VIOLATION
)	COMPLIANCE ORDER
EPA ID No. CAD 047 429 147)	AND
)	NOTICE OF RIGHT TO
<u>Respondent.</u>)	REQUEST A HEARING

I. DETERMINATION OF VIOLATION

A. INTRODUCTION

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Johnson Laminating and Coating, Inc. ("Johnson").
2. Respondent owns and operates a facility located at 20631 Annalee Avenue, Carson, California 90746 (the "Facility"). The Facility designs, develops, and manufactures complex coated and laminated roll to roll products. The Facility's EPA Identification Number is CAD 047 429 147.
3. This Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent violated the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code ("H&SC"), and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001

et seq., and Section 3001 et seq., of RCRA, 42 U.S.C. § 6921 et seq. This Complaint seeks to assess a civil penalty that Respondent must pay for violations alleged herein, and compliance with the compliance tasks described herein.

B. JURISDICTION

4. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 (*see also* 40 C.F.R. § 260.10).¹
5. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 (*see also* 40 C.F.R. § 260.10).
6. Respondent is the “owner” of a facility as defined in 22 C.C.R. § 66260.10 (*see also* 40 C.F.R. § 260.10).
7. Respondent’s Facility is a “hazardous waste facility” as defined in 22 C.C.R. § 66260.10 (*see also* 40 C.F.R. § 260.10).
8. Respondent generates and stores materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 (*see also* 40 C.F.R. §§ 260.10 and 261.2).
9. Respondent is a “generator” of “hazardous waste” as those terms are defined in 22 C.C.R. § 66260.10, 22 C.C.R. § 66261.3, and California H&SC Section 25117, (*see also* Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); 40 C.F.R. §§ 260.10 and 261.3). This hazardous waste includes, but is not limited to, waste flammable liquids, including methyl ethyl ketone (waste codes D001, D035, F003, F005).
10. Respondent is a large quantity generator of hazardous waste (“LQG”), generating 1,000 kilograms or more of hazardous waste each month.
11. On January 24, 2007, EPA conducted a RCRA compliance evaluation inspection (“CEI”) at the Facility.
12. Based upon the findings made during the CEI, additional information obtained subsequent to the CEI, and Respondent’s response to a 3007(a) Request for Information, EPA has determined that Respondent has violated the following regulations adopted pursuant to California’s hazardous waste program: 22 C.C.R. § 66265.173(a); 22 C.C.R. § 66265.52; 22 C.C.R. § 66265.35; and 22 C.C.R. § 66270.1(c) (*see also* 40 C.F.R. § 265.173(a); 40 C.F.R. § 265.52; 40 C.F.R. § 265.35; and 40 C.F.R. § 270.1).
13. On August 1, 1992, the state of California received authorization to administer a hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. This

¹ Although EPA is enforcing the California regulations through this Complaint, parallel federal regulations are cited in brackets for convenience.

authorization was updated on September 26, 2001 (*see* 66 Fed. Reg. 49118, September 26, 2001). The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the H&SC, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The state of California has been authorized for all the regulations referenced in this Complaint.

14. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
15. Given that a violation of California's authorized hazardous waste program constitutes a violation of Subtitle C of RCRA, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921, *et seq.*
17. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

Count I

Failure to Close Containers of Hazardous Waste

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
19. 22 C.C.R. § 66265.173(a) (*see also* 40 C.F.R. § 265.173(a)) requires containers of hazardous waste that are stored on-site to be kept closed, except when it is necessary to add or remove waste.
20. At the time of the CEI, there were four containers holding hazardous waste (solvent-contaminated materials, waste codes D001, D035, F003, F005) at the Facility that were open.
21. At the time of the CEI, waste was neither being added to nor removed from the containers identified in the preceding paragraph.

22. Therefore, EPA alleges that Johnson has violated 22 C.C.R. § 265.173(a) (*see also* 40 C.F.R. § 265.173(a)).

Count II

Failure to Maintain a Complete Contingency Plan

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 22 C.C.R. § 66265.51 (*see also* 40 C.F.R. § 265.51) requires that every owner or operator of a hazardous waste facility must have a contingency plan for the facility.
25. Pursuant to 22 C.C.R. § 66265.52 (*see also* 40 C.F.R. § 265.52), the contingency plan must (1) describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services; (2) list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator; and (3) list all emergency equipment at the facility where this equipment is required.
26. As of January 24, 2007, the contingency plan for the Facility lacked a description of the Facility's arrangements with local police, fire, hospitals, and emergency response teams.
27. As of January 24, 2007, the contingency plan for the Facility lacked home addresses of persons qualified to act as emergency coordinator.
28. As of January 24, 2007, the contingency plan for the Facility lacked a list of emergency equipment where the equipment was required.
29. Therefore, EPA alleges that Respondent violated 22 C.C.R. § 66265.52 (*see also* 40 C.F.R. § 265.52).

Count III

Failure to Maintain Adequate Aisle Space

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.
31. 22 C.C.R. § 66265.35 (*see also* 40 C.F.R. § 265.35) requires owners or operators of hazardous waste facilities to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated that aisle space is not needed for any of those purposes.

32. At the time of the CEI, several containers holding hazardous waste at the Facility were placed against a wall with other containers blocking access to them.
33. At the time of the CEI, there was not sufficient aisle space to allow fire protection equipment, spill control equipment, and decontamination equipment to reach the containers identified in the preceding paragraph without first removing obstructions (*i.e.*, the other containers).
34. Johnson has not demonstrated that aisle space is not needed for these purposes.
35. Therefore, EPA alleges that Johnson violated 22 C.C.R. § 66265.35 (*see also* 40 C.F.R. § 265.35).

Count IV

Operating without a Permit or Interim Status

36. Paragraphs 1 through 35 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. 22 C.C.R. § 66270.1(c) (*see also* 40 C.F.R. § 270.1) requires a hazardous waste permit for the transfer, treatment, storage, and disposal of any hazardous waste, as defined in section 66261.3.
38. 22 C.C.R. § 66262.34(a) (*see also* 40 C.F.R. § 262.34) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator complies with various requirements, including:
 - a. marking the accumulation start date on each container holding hazardous waste;
 - b. marking the words "Hazardous Waste" on each container holding hazardous waste;
 - c. labeling each container holding hazardous waste with information about the nature of the waste within, including the composition and physical state of the waste;
 - d. closing containers of hazardous waste except when waste is being added to or removed from the containers;
 - e. maintaining a complete contingency plan; and
 - f. maintaining adequate aisle space.

39. 22 C.C.R. § 66262.34(f) (*see also* 40 C.F.R. § 262.34) requires generators who accumulate hazardous waste on-site without a permit or interim status to mark each container with the accumulation start date, mark each container with the words "Hazardous Waste," and mark each container with information about the nature of the waste within.
40. 22 C.C.R. § 66262.34(c) (*see also* 40 C.F.R. § 262.34) states that, subject to certain exceptions that do not apply here, a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and must comply with chapters 14 and 15 of Division 4.5 of Title 22 (standards for owners and operators of hazardous waste facilities and interim status standards for facilities), as well as the hazardous waste permit requirements of chapter 20.
41. 22 C.C.R. § 66262.34(e) (*see also* 40 C.F.R. § 262.34) provides that a generator may accumulate as much as 55 gallons of hazardous waste at or near the point of generation without a permit or grant of interim status if (1) the accumulation start date is marked on each container used for accumulation and (2) once 55 gallons of hazardous waste have been accumulated there, the generator complies with 22 C.C.R. § 66262.34(a) within 3 days.
42. On January 24, 2007, a Facility representative told EPA inspectors that the Facility accumulates 100 kilograms of hazardous waste (approximately 55 gallons) every 2 days.
43. On January 24, 2007, a Facility representative told EPA inspectors that the Facility operates 5 days a week, 24 hours per day.
44. The Facility generates hazardous waste streams on a continuous basis during its hours of operation.
45. The Facility provided no indication to EPA that it suspended operations for any significant period of time since 2004.
46. On January 24, 2007, there were 10 containers located in the Facility's hazardous waste storage area and 4 containers located in the Facility's satellite accumulation area, the contents of which a Facility representative identified as waste flammable liquids (waste codes D001, D035, F003, F005).
47. Each of the wastes identified in the preceding paragraph is a hazardous waste.
48. All 14 of the containers identified in Paragraph 46 lacked hazardous waste labels and information about the nature of the waste within.
49. Thirteen of the containers identified in Paragraph 46 lacked accumulation start dates.

50. As alleged in Counts I, II, and III, the Facility failed to close containers of hazardous waste at a time when waste was neither being added to nor removed from those containers, the Facility failed to maintain a complete contingency plan, and the Facility failed to maintain adequate aisle space.
51. The Facility does not have a permit for storage of hazardous waste and has not obtained interim status.
52. According to the Facility's hazardous waste manifests for the period March 29, 2004 through October 5, 2007, there were 8 occasions on which the duration between shipments of hazardous waste exceeded 90 days:
- a. March 29, 2004 to July 28, 2004 (121 days total);
 - b. September 2, 2004 to January 18, 2005 (138 days total);
 - c. May 24, 2005 to December 30, 2005 (220 days total);
 - d. January 18, 2005 to May 24, 2005 (126 days total);
 - e. December 30, 2005 to June 14, 2006 (166 days total);
 - f. June 14, 2006 to December 6, 2006 (175 days total);
 - g. March 14, 2007 to June 20, 2007 (98 days total); and
 - h. June 20, 2007 to October 5, 2007 (107 days total).
53. The Facility stored waste on-site over the 90-day limit for a total of at least 411 days between March 29, 2004 and October 5, 2007.
54. Therefore, EPA alleges that Johnson stored hazardous waste without a permit in violation of 22 C.C.R. § 66270.1(c) (*see also* 40 C.F.R. § 270.1).

D. CIVIL PENALTY

55. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.* occurring on or after January 31, 1997 but before March 16, 2004, and a penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after March 15, 2004.

56. The violation addressed in Count I, failure to close containers, posed a relatively low risk of human or environmental exposure to hazardous waste or constituents, but the extent of deviation from the regulatory requirement represented substantial noncompliance. This violation began and ended on January 24, 2007.
57. The violation addressed in Count II, failure to maintain a complete contingency plan, posed a significant risk of human or environmental exposure to hazardous waste or constituents, and represented a significant deviation from the requirements of the regulation. This violation began and ended on January 24, 2007.
58. The violation addressed in Count III, failure to maintain adequate aisle space, posed a relatively low risk of human or environmental exposure to hazardous waste or constituents, and although the violation represented a deviation from a regulatory requirement, most elements of the requirement were met. This violation began and ended on January 24, 2007.
59. The violation addressed in Count IV, operating without a permit or interim status, had a significant adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program and represented a significant deviation from the regulatory requirements. This violation continued for 411 days over the following periods of time:
 - a. From at least March 29, 2004 to July 28, 2004 (29 days over the 90-day limit);
 - b. From at least September 2, 2004 to January 18, 2005 (44 days over the 90-day limit);
 - c. From at least May 24, 2005 to December 30, 2005 (128 days over the 90-day limit);
 - d. From at least January 18, 2005 to May 24, 2005 (34 days over the 90-day limit);
 - e. From at least December 30, 2005 to June 14, 2006 (72 days over the 90-day limit);
 - f. From at least June 14, 2006 to December 6, 2006 (83 days over the 90-day limit);
 - g. From at least March 14, 2007 to June 20, 2007 (6 days over the 90-day limit); and
 - h. From at least June 20, 2007 to October 5, 2007 (15 days over the 90-day limit).

60. In assessing the severity of these violations, EPA has determined that these violations demonstrate substantial noncompliance with the applicable requirements, and resulted in substantial risk to human health and the environment.
61. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$32,500 per violation per day for each day during which a violation cited in the above outlined Counts continued.

II. COMPLIANCE ORDER

62. Within 30 days of the effective date of this Complaint, Respondent shall submit documentation to EPA showing that it has complied with the requirement that it ship hazardous waste off-site within 90 days. Respondent must continue to submit such documentation to EPA on a quarterly basis for the following 36 months.

III. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

63. In accordance with Section 3008(b) of RCRA, 42 U.S.C. §6928(b), the Compliance Order set forth herein shall become final unless Respondent files an Answer and request for public hearing in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Ginette Chapman (ORC-3), Assistant Regional Counsel at the same address.
64. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent intends to place at issue, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested.
65. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default.

Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.

66. If Respondent requests a public hearing, it will be held in a location determined in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 552 et seq., and 40 C.F.R. Part 22. Respondent may request a hearing on any material fact alleged in the Complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order.
67. Pursuant to 40 C.F.R. § 22.7(c) of the Consolidated Rules of Practice, where a pleading or document is served by first class mail or commercial delivery service, but not by overnight or same-day service, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

B. INFORMAL SETTLEMENT

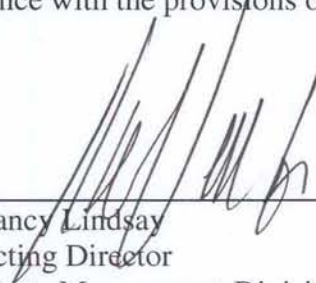
68. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.
69. In addition to the compliance schedule set forth in the Order above, any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent has stipulated.
70. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.
71. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Ginette Chapman, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 947-4144.

IV. EFFECTIVE DATE

The "Effective Date" of this Complaint is the date of Service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

5-1-08

Date



Nancy Lindsay
Acting Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 C.F.R. Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:

Scott Davidson
Johnson Laminating and Coating, Inc.
20631 Annalee Ave.
Carson, CA 90746

April 30, 2008 Cameron McDonald

Date

Hazardous Waste Management Division