

IN THE MATTER OF:

New Prime, Inc.
3720 West 800 South
Salt Lake City, Utah
(500.200_2019_Prime Trucking)

Respondent.

Docket No. RCRA-08-2020-0007

COMPLAINT, AND NOTICE OF
OPPORTUNITY FOR A HEARING
UNDER 42 U.S.C. § 6928(a)

I. INTRODUCTION

1. In this Complaint and Notice of Opportunity for a Hearing Under 42 U.S.C. § 6928(a) (Complaint), the U.S. Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Respondent New Prime, Inc. (doing business as Prime Inc.) (Respondent) as more fully described below.

II. JURISDICTIONAL ALLEGATIONS

2. This Complaint is issued under the authority vested in the Administrator of the EPA (Administrator) by section 3008(a) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6928(a).
3. The authority to execute this Complaint is provided to the Regional Administrators by EPA delegation No. 8-9-A, dated May 11, 1994. The Regional Administrator for EPA Region 8 has properly delegated this authority to the Director, Enforcement and Compliance Assurance Division, by delegation No. 8-9-A, dated August 6, 2019.
4. This proceeding is subject to 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 (Consolidated Rules of Practice), a copy of which is being provided to Respondent with this Complaint.
5. The State of Utah has been notified of this action in accordance with section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), on or about August 26, 2020.

III. GOVERNING LAW

6. When the EPA determines that any person has violated or is in violation of any RCRA requirement, RCRA originally authorized a civil penalty of up to \$25,000 per day per violation. 42 U.S.C. § 6928(a)(3). This figure has been adjusted upward for inflation pursuant to the Debt Collection Improvement Act of 1996, Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. part 19, which authorizes penalties of up to \$37,500 per day per violation that occurred prior to November 2, 2015, and penalties of up to \$101,439 per day per violation that occurred after November 2, 2015, and are assessed on or after January 13, 2020. Civil Monetary Penalties Inflation Adjustment Rule, 71 Fed. Reg. 1751 (Jan. 13, 2020) and 78 Fed. Reg. 66643 (Nov. 6, 2013).
7. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA may enforce federally-authorized state hazardous waste programs for violations of any requirement of the authorized program which has been incorporated into Subtitle C of RCRA, sections 3001-3023e, 42 U.S.C. §§ 6921-6939e.
8. Section 3002(a) of RCRA, 42 U.S.C. § 6922(a), required the Administrator to promulgate regulations establishing standards applicable to generators of characteristic or listed hazardous waste, including requirements respecting: record keeping; labeling and use of appropriate containers for the storage, transportation or disposal of hazardous waste; the furnishing of information regarding the chemical composition of hazardous waste to those transporting, treating, storing or disposing of such waste; use of a manifest system to ensure that hazardous waste is designated for treatment, storage or disposal in, and arrives at, a permitted facility; and reporting to the Administrator. The regulations promulgated pursuant to this section are set forth at 40 C.F.R. part 262 and Utah's authorized regulation at Utah Admin. Code R315-5 (2003).¹
9. Section 3005 of RCRA, 42 U.S.C. § 6925(a), required the 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. Thus, persons owning and operating a facility that treats, stores, or disposes of hazardous waste must either possess a permit issued by the EPA or the authorized state authority. *Id.* The regulations promulgated pursuant to this section are set forth at 40 C.F.R. §§ 270 and 264 and Utah Admin. Code R315-3; R315-7; R315-8.
10. The term "generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).

¹ The EPA authorized revisions to the State of Utah's hazardous waste program on March 7, 2008. 73 Fed. Reg. 12277 (regulations submitted by Utah on September 30, 2003).

11. The term "facility" means 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. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
12. A "person" is defined as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States. 7 U.S.C. § 6903(15).
13. The term "operator" means the person responsible for the overall operation of a facility. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
14. The term "owner" means the person who owns a facility or part of a facility. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
15. A "manifest" is defined as "the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage." 42 U.S.C. § 6903(12).
16. The term "storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
17. Pursuant to Utah Admin. Code R315-2-2(a)(1), a "solid waste" is any discarded material that is not excluded by subsection Utah Admin. Code R315-2-4(a) or that is not excluded by variance granted under Utah Admin. Code R315-2-18 and Utah Admin. Code R315-2-19.
18. Pursuant to Utah Admin. Code R315-2-2(a)(2), a "discarded material" is any material that is abandoned, recycled, or inherently waste-like.
19. Pursuant to Utah Admin. Code R315-2-2(b), materials are solid waste if they are abandoned by being disposed of, burned, or incinerated, or accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.
20. Pursuant to Utah Admin. Code R315-2-3(a), a solid waste as defined in Utah Admin. Code R315-2-2 is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under Utah Admin. Code R315-2-4(b); and it is listed in Utah Admin. Code R315-2-10 or R315-2-11, or it exhibits any of the characteristics of hazardous waste (ignitibility, corrosivity, reactivity, toxicity).
21. Pursuant to Utah Admin. Code R315-2-9(d)(1)(i), a waste is a hazardous waste for ignitability if a representative sample of the waste is a liquid and determined to have a flashpoint of less than 60 degrees Celsius (140 degrees Fahrenheit).
22. Pursuant to Utah Admin. Code R315-2-9(g), a waste is a hazardous waste for toxicity if a representative sample contains a contaminant at a level greater than a maximum concentration allowed using the test known as the Toxicity Characteristic Leaching Test (TCLP).

23. The TCLP regulatory limit for chromium is 5 milligrams per liter (mg/L). 40 C.F.R. § 261.24 (Table 1 Maximum Concentration of Contaminants for the Toxicity Characteristic).
24. The TCLP regulatory limit for barium is 100 mg/L. 40 C.F.R. § 261.24 (Table 1 Maximum Concentration of Contaminants for the Toxicity Characteristic).

IV. LEGAL AND FACTUAL ALLEGATIONS

25. Respondent is a Utah corporation.
26. Respondent is a “person” as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
27. Respondent is the “owner” and “operator” of a facility located at 3720 West 800 South, Salt Lake City, Utah 84104 (“Facility”), as defined in 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
28. The Facility, located at 3720 West 800 South, Salt Lake City, Utah 84104, owned and operated by Respondent, and used for the storage of hazardous waste is a “facility” as defined in 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).
29. Basic functions performed at, or from, the Facility include storage, maintenance and repair of trucking equipment for a national freight trucking company.
30. On or about September 24, 2015, Pittsburgh Paint and Glass (PPG) hired Respondent to ship four different types of paint products and accompanying packaging, totaling 40,743 pounds, from Springdale, Pennsylvania, to Portland, Oregon.
31. The shipment contained 36 drums of “UN 1263 paint 3 PGIII,” weighing 19,945 pounds; two pails of “UN 1263 paint 3 PGIII,” weighing 106 pounds; and four drums of unregulated paint; and 32 drums of PPG’s Universal Urethane Yellow Primer, product code BY1Y100B, weighing 17,683 pounds.
32. The Safety Data Sheets (SDSs) of the drums of paint included in the shipment state that each of the four types of paint products in the shipment had a flashpoint of less than 140 degrees Fahrenheit.
33. The SDS for Universal Urethane Yellow Primer states that the strontium chromate in the primer contains chromium at concentrations between 25,000 parts per million (ppm) and 62,500 ppm, with a federal regulatory level of 5 mg/L (D007).
34. The SDS for Universal Urethane Yellow Primer states that the barium chromate in the primer contains chromium at concentrations between 750 ppm and 2,500 ppm, with a regulatory level of 5 mg/L (D007).
35. The SDS for Universal Urethane Yellow Primer states that the barium chromate in the primer contains barium at concentrations between approximately 1,620 ppm and 5,400 ppm, with a regulatory level of 100 mg/L (D005).
36. On or about September 27, 2015, Respondent used its trailer to transport the four types of paint products from Pennsylvania to Oregon.

37. On or about September 27, 2015, Respondent's trailer caught fire outside of Mountain Home, Idaho and the drums and paint contents were burned.
38. An Idaho State Communications Center Report dated on or about September 27, 2015, documents the following from the Incident Commander: "[s]everal drums . . . had ruptured releasing paint onto the road."
39. The paint contents of the remaining drums in the trailer were burned and rendered useless.
40. As a result of the trailer fire, the drums of paint waste became a "solid waste" because the contents of the drums were burned and rendered useless. Utah Admin. Code R315-2-2.
41. The drums of paint waste are hazardous waste because the contents exhibit the characteristic of ignitability, as described in paragraph 60 below. Utah Admin. Code R315-2-9(d).
42. The drums of paint waste are hazardous waste because the contents exhibit the characteristic of toxicity, as described in paragraph 61 below. Utah Admin. Code R315-2-9(g).
43. Respondent is a "generator" as defined in 40 C.F.R. § 260.10, as incorporated by reference in Utah Admin. Code R315-1-1(b).
44. On or about September 27, 2015, Respondent hired B&W Wrecker Services (B&W) to transport the burned trailer and burned drums of paint waste from the site of the trailer fire outside of Mountain Home, Idaho, to B&W's lot located at 20 S. Garden in Boise, Idaho ("B&W's Lot").
45. On or about October 1, 2015, Respondent hired Brett's Towing of Ogden, Utah, to transport the burned trailer and approximately 32 55-gallon burned drums of paint waste from B&W's Lot in Idaho to Respondent's Facility in Salt Lake City, Utah (Facility).²
46. Respondent used the Facility for "storage" of the burned drums of paint waste, as defined in 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b) between at least October 1, 2015, and August 3, 2016.
47. On or about August 2, 2016, Special Agents from the EPA-Criminal Investigation Division (CID) conducted an initial inspection on consent of the Facility (EPA-CID Inspection).
48. At the time of the EPA-CID Inspection, the burned trailer and 32 burned drums of paint waste were covered by tarps and stored outside at the Facility.

² On or about September 29, 2015, Respondent also hired Corder, LLC (also known as Corder Excavation), through B&W, to transport and dispose of a portion of the burned drums of paint waste from the B&W Lot to the Simco Road commercial municipal solid waste landfill operated by Idaho Waste Systems in Mountain Home, Idaho. This landfill is not a RCRA permitted hazardous waste disposal facility. Respondent's transportation and disposal in Idaho is not a subject of this complaint.

49. During the EPA-CID Inspection, the tarps covering the 32 burned drums were removed and several burned drums of paint waste on the trailer were stained with paint, and missing covers known as bung caps.
50. During the EPA-CID Inspection, the EPA-CID agents documented the smell of a strong chemical odor emanating from the burned trailer and drums.
51. During the EPA-CID Inspection, the EPA-CID agents documented that the burned drums of paint waste did not have labels.
52. On August 3, 2016, EPA CID sent a letter to Respondent requesting the burned trailer and burned drums of paint waste stored at the Facility not to be moved or manipulated (CID Preservation Letter).
53. On August 24, 2016, at the request of EPA-CID, the EPA National Enforcement Investigation Center (NEIC) conducted a field inspection at the Facility (NEIC Inspection).
54. As part of the NEIC Inspection, NEIC staff performed on-site X-ray fluorescence spectrometry testing to perform chemical analysis of fluids in the 32 burned drums of paint waste stored at the Facility.
55. According to the on-site X-ray fluorescence spectrometry, 20 of the 32 burned drums contained materials consistent with a strontium chromate primer, with readings greater than 10,000 milligrams per kilogram (mg/kg) chromium and 17,000 mg/kg strontium.
56. Strontium chromate is the same material in PPG's Universal Urethane Yellow Primer.
57. Strontium chromate is used as a metal protective coating to prevent corrosion, as a colorant in polyvinyl chloride resins, and in pyrotechnics.
58. As part of the NEIC Inspection, NEIC staff extracted representative samples from 8 of the 20 burned drums that contained material consistent with strontium chromate primer, for further laboratory analysis.
59. On or about August 24, 2016, NEIC utilized TCLP analysis of 8 representative samples for toxicity and ignitability characteristics.
60. The NEIC analysis performed on or about August 24, 2016, documented that the flashpoint for the representative samples of 8 of the 20 burned drums of paint waste ranged between 109 and 113 degrees Fahrenheit (43 and 45 degrees Celsius), meeting the regulatory threshold for ignitability, which is a flashpoint below 140 degrees Fahrenheit (60 degrees Celsius). Utah Admin. Code R315-2-9(d).
61. The NEIC TCLP analysis performed on or about August 24, 2016, on the representative samples of 8 of the 20 burned drums of paint waste documented levels of chromium between 36.8 and 352 mg/L, which levels exceed the regulatory level of 5 mg/L for toxicity. Utah Admin. Code R315-2-9(g).

62. At least 20 of the 32 burned drums of paint waste are “hazardous waste” that exhibits the ignitibility and toxicity characteristics of hazardous waste.
63. On or about September 19, 2016, after receiving the sampling results from NEIC, Respondent created a hazardous waste manifest.
64. Respondent provided the generator name and address as Prime, Inc., 2740 North Mayfair Avenue, Springfield, Missouri 65803, on the hazardous waste manifest.
65. Respondent provided the generator’s site address as Prime, Inc., 3720 West 800 South, Salt Lake City, Utah 84104, on the hazardous waste manifest.
66. Respondent provided the EPA Facility Identification Number MOD050188407, using a Missouri facility generator id number, on the hazardous waste manifest.
67. The hazardous waste manifest lists the 32 drums of burned of paint waste with the following waste codes: D001 (ignitibility); D007 (chromium); and D035 (methyl ethyl ketone).
68. On or about September 19, 2016, Respondent arranged for the transportation of the 32 burned drums of paint waste by a licensed hazardous waste transporter, H2O Environmental.
69. On or about September 19, 2016, Respondent arranged for the disposal of the 32 burned drums of paint waste as hazardous waste at Heritage Environmental, a permitted TSD facility located at 284 East Storey Road, Coolidge, Arizona.
70. Respondent stored at least 20 burned drums of hazardous waste at the Facility for at least 306 days, from October 1, 2015, until August 3, 2016; the date of the CID Preservation Letter.
71. Respondent was assigned the EPA Facility Identification Number UTP000001644, for the Facility in Utah on or about April 23, 2020.

V. FINDINGS OF VIOLATION

Count 1: Failure to Make a Hazardous Waste Determination

72. The EPA (Complainant) hereby incorporates the allegations contained in paragraphs 6 through 71 above, as fully set forth herein.
73. Pursuant to 40 C.F.R. § 262.11, incorporated by reference at Utah Admin. Code R315-5-1-1.11, each person who generates a solid waste shall determine whether that waste is a hazardous waste.
74. At the time of the EPA-CID Inspection and the NEIC Inspection, Respondent had not made a hazardous waste determination of the 32 burned drums of paint solid waste.
75. Respondent’s failure to make a hazardous waste determination of the 32 burned drums of paint waste, a solid waste, is a violation of Utah Admin. Code R315-5-1-1.11.

Count 2: Failure to Prepare a Manifest

76. Complainant hereby incorporates the allegations contained in paragraphs 6 through 71 above, as fully set forth herein.
77. Pursuant to 42 USC. § 6922(a)(5), use of a manifest system is necessary to assure that all hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at treatment storage and disposal facilities for which a permit has been issued as required in RCRA..
78. Pursuant to 40.C.F.R. 262.20(a)(1), incorporated by reference at R315-5-2-2.20(a), a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare a manifest (OMB Control number 2050-0039) on EPA Form 8700-22.
79. Respondent did not prepare a manifest for transportation of the 32 burned drums of hazardous waste to the Facility.
80. Respondents failure to prepare a manifest for Brett's Towing transportation of the 32 burned drums of paint waste from B&W's Lot to storage at the Facility constitutes a violation of Utah Admin. Code R315-5-2-2.20(a).

Count 3: Storage Without a Permit

81. Complainant hereby incorporates the allegations contained in paragraphs 6 through 71 above, as fully set forth herein.
82. Pursuant to Utah Admin. Code R315-3-1-1.1(a), no person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the State of Utah Executive Secretary for, a hazardous waste permit for that facility.
83. Between October 1, 2015, and August 3, 2016, Respondent stored at least 20 burned drums of hazardous waste at the Facility.
84. At no time has the EPA or the State of Utah issued a RCRA permit to Respondent to own and operate the Facility as a hazardous waste treatment, storage, or disposal facility.
85. Between October 1, 2015, and August 3, 2016, Respondent owned and operated a hazardous waste storage facility without a permit in violation of Utah Admin. Code R315-3-1-1.1(a).

Count 4: Failure to Properly Manage Containers

86. Complainant hereby incorporates the allegations contained in paragraphs 6 through 71 above, as fully set forth herein.
87. Pursuant to 40 C.F.R. § 265.173, incorporated by reference at Utah Admin. Code R315-7-16.4, (a) a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste; and (b) a container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
88. During the EPA-CID Inspection, several burned drums on the trailer were open and missing covers known as bung caps.
89. All 32 drums and paint waste stored at the Facility were burned.
90. Between October 1, 2015, and August 3, 2016, Respondent stored burned drums of hazardous waste that were left open with bung caps missing in violation of Utah Admin. Code R315-7-15-16.4.

Count 5: Failure to Obtain an EPA ID Number

91. Complainant hereby incorporates the allegations contained in paragraphs 6 through 71 above, as fully set forth herein.
92. Pursuant to 40 C.F.R. § 264.11, incorporated by reference at Utah Admin. Code R315-8-2-2.2, every facility owner or operator shall obtain an EPA identification number by applying to the State Executive Secretary using EPA form 8700-12 ("Notification of Regulated Waste Activity").
93. Respondent owned and operated the Facility and stored at least 20 drums of hazardous waste at the Facility between October 1, 2015, and August 3, 2016.
94. Respondent's storage of at least 20 burned drums of hazardous waste at the Facility prior to obtaining an EPA identification number constitutes a violation of Utah Admin. Code R315-8-2-2.2.

VI. PROPOSED PENALTY

95. Section 3008(a)(3) of RCRA, 42 U.S.C. 6928(a)(3), as modified pursuant to the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. part 19, authorize a civil penalty of up to of up to \$37,500 per day per violation that occurred prior to November 2, 2015, and \$101,439 per day per violation that occurred after November 2, 2015, when penalties are assessed on or after January 13, 2020. The Complainant proposes to assess a total administrative penalty of \$639,675 against Respondent.
96. In proposing this penalty amount, the Complainant has considered the applicable statutory factors set forth in section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), include the seriousness of the violations, and any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require by following the RCRA Civil Penalty Policy (a copy of which is attached hereto). This policy is used by Complainant to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case.

97. Complainant proposes to assess a civil penalty of \$639,675 for the violations alleged herein as follows:

Count 1 \$37,500

Count 2 \$36,207

Count 3 \$478,602 (single day maximum and multi-day penalty applied for 179 days)

Count 4 \$43,683

Count 5 \$43,683

VII. ANSWER AND RIGHT TO REQUEST A HEARING

98. Pursuant to 40 C.F.R. § 22.15(a), Respondent may file an answer in order to contest any material fact upon which this Complaint is based, contend that the proposed penalty is inappropriate, or contend that it is entitled to judgment as a matter of law.

99. Any such answer to the Complaint must be filed with the Regional Hearing Clerk within 30 days of the Effective Date of this Complaint at the following address. The answer may be filed by email, using the email address below, pursuant to the instructions, conditions, and limitations of the Standing Order Designation of EPA Region 8 Part 22 Electronic Filing System (May 8, 2020), a copy of which is being provided to Respondent with this Complaint.

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
haniewicz.melissa@epa.gov

100. A copy of the answer and every other document filed in this action must be mailed, or sent by email, to the EPA enforcement attorney for this matter at the following address:

Laurianne M. Jackson
Senior Assistant Regional Counsel
Regulatory Enforcement Section
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (R8-ORC-R)
Denver, Colorado 80202-1129
jackson.laurianne@epa.gov

101. Pursuant to 40 C.F.R. § 22.15(b), Respondent's answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. If Respondent states in its answer that it has no knowledge of a particular factual allegation, the allegation shall be deemed denied. Respondent's answer shall also

state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complaint's proposed penalty.

102. Pursuant to 40 C.F.R. § 22.15(d), Respondent's failure to admit, deny, or explain any factual allegation in its answer constitutes an admission of that allegation.
103. Respondent has the right to request a hearing in its answer. Pursuant to 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing upon any issue raised by the Complaint and answer, including any fact alleged in this Complaint, the appropriateness of the proposed penalty, and/or to assert that it is entitled to judgment as a matter of law. Even if Respondent does not explicitly request a hearing in its answer, the Presiding Officer assigned to this case may hold such a hearing if Respondent's answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in the Consolidated Rules of Practice.

VIII. FAILURE TO FILE AN ANSWER

104. If Respondent fails to file an answer as further specified above, Respondent may be found to be in default. Default constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to a hearing on the EPA's factual allegations. In order to avoid default in this matter, Respondent must, within 30 days of the Effective Date of this Complaint, either: (1) settle this matter with the EPA or (2) file both an original and one copy of a written answer to this Complaint with the Regional Hearing Clerk as specified above.
105. Failure to file a written answer within 30 days may result in the issuance of a default order imposing the penalties herein without further proceedings.
106. If Respondent fails to pay the entire penalty assessed in any default order within 30 days of the Effective Date of this Complaint, the United States may file a civil judicial action to collect the assessed penalty and any applicable interest, handling fees, and additional penalties pursuant to the Federal Claims Collection Act, 31 U.S.C. § 3701, *et seq.* or any other applicable law.

IX. SETTLEMENT CONFERENCE

107. Regardless of whether Respondent files an answer or requests a hearing, Respondent may confer with EPA staff concerning the alleged violations and the amount of any penalty. Such a conference provides Respondent with an opportunity to respond informally to the allegations in this Complaint, to submit any additional information to the EPA that may be relevant to this matter, and to explore any opportunities for settling this matter.
108. A settlement conference does not, however, affect Respondent's obligation to file a written answer within 30 days of the Effective Date of the Complaint, nor does it waive Respondent's right to request a hearing. Respondent and the EPA may simultaneously pursue the adjudicatory hearing process and possible settlement of this matter. Any request for settlement negotiations should be directed to the enforcement attorney named above, who can also be reached by telephone at (303) 312-6950.

X. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

109. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in this Complaint in full pursuant to 40 C.F.R. § 22.18(a). Such payment need not contain any response to, or admission of, the allegations in this Complaint. Such payment would waive Respondent's rights to contest the allegations in this Complaint and to appeal any final order resulting from this Complaint.
110. If such payment is made within 30 calendar days of the Effective Date of this Complaint, Respondent need not file an answer. Respondent may obtain a 30-day extension to pay the proposed penalty in full without filing an answer by complying with the requirements of 40 C.F.R. § 22.18(a)(2).
111. The payment shall be made by any method provided on the following website:
<https://www.epa.gov/financial/makepayment>;
112. Within 24 hours of payment, Respondent shall email proof of payment to the R8 Regional Hearing Clerk and the Enforcement Attorney named above (at the addresses provided above). "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

XI. CONTINUING OBLIGATION TO COMPLY

113. Neither assessment nor payment of the administrative penalty shall affect Respondent's continuing obligation to comply with the RCRA or any other federal, state, or local law.

XII. EFFECTIVE DATE

114. The "Effective Date" of this Complaint is the date of service. The date of service is the date the Respondent or Respondent's authorized representative is personally served with this Complaint or signs a return mail receipt or other written verification of delivery, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Date: 09/17/2020

By: **SUZANNE
BOHAN**  Digitally signed by SUZANNE
BOHAN
Date: 2020.09.17 15:19:11
-06'00'

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

1595 Wynkoop Street 8-ENF
Denver, Colorado 80202-1129

Complainant