



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 26 2019

SENT VIA E-MAIL

REPLY TO THE ATTENTION OF:

Mr. Matthew S. Duffy  
Attorney at Law  
Monroe Moxness Berg PA  
7760 France Avenue South  
Minneapolis, Minnesota 55345-5844  
[MDuffy@mmbllawfirm.com](mailto:MDuffy@mmbllawfirm.com)

Re: Consent Agreement and Final Order  
Warrior Mfg., LLC  
EPA ID Number: MNS000130104  
Docket Number: RCRA-05-2019-0007

Dear Mr. Duffy:

Enclosed, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on February 26, 2019, with the Regional Hearing Clerk (RHC).

The Respondent must pay the civil penalty in the amount of \$47,800 within 30 days of the effective filing date of the CAFO in the manner prescribed in paragraphs 48-53 of the CAFO. All checks must reference the Respondent's site name and the CAFO docket number RCRA-05-2019-0007.

Thank you for your cooperation in resolving this matter. Should you have any questions, please feel free to contact me at (312) 886-8121, or your staff may contact Brenda Whitney at either (312) 353-4796 or [whitney.brenda@epa.gov](mailto:whitney.brenda@epa.gov).

Sincerely,

D. Scott Ireland  
Acting Chief, RCRA Branch  
Land and Chemicals Division

Enclosure

cc: Paul Soukup, Warrior Mfg., LLC ([paul.soukup@warriormgllc.com](mailto:paul.soukup@warriormgllc.com)) (w/CAFO)  
John Elling, MPCA ([john.elling@state.mn.us](mailto:john.elling@state.mn.us)) (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. RCRA-05-2019-0007
	)	
Warrior Mfg., LLC	)	Proceeding to Assess a Civil Penalty
Hutchinson, Minnesota	)	Under Section 3008(a) of the Resource
	)	Conservation and Recovery Act,
U.S. EPA ID No.: MNS000130104	)	42 U.S.C. § 6928(a)
	)	
Respondent.	)	
_____	)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Warrior Mfg., LLC, a limited liability company doing business in the State of Minnesota.
4. U.S. EPA provided notice of commencement of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

10. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

12. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous

waste program in lieu of the federal government's base RCRA program effective February 11, 1985. 50 Fed. Reg. 3756 (January 28, 1985). U.S. EPA has subsequently approved of amendments to the Minnesota hazardous waste program. 40 C.F.R. § 272.1201

14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

#### **Factual Allegations**

15. Respondent is a "person" as that term is defined under the Minn. R. 7045.0020 subpart 66, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "operator" or "owner" as those terms are defined under Minn. R. 7045.0020 subparts 62 and 64 [40 C.F.R. § 260.10] of a facility located at 1145 5<sup>th</sup> Avenue SE in Hutchinson, Minnesota.

17. Respondent's facility consists of land and structures, other appurtenances, and improvements on the land, portions of which are used for storing hazardous waste.

18. Respondent's facility constitutes a "facility," as that term is defined under Minn. R. 7045.0020 subpart 24 [40 C.F.R. § 260.10].

19. Respondent's actions and processes at the facility cause the production of "hazardous waste," as that term is defined under Minn. R. 7045.0020 subpart 33 [40 C.F.R. § 260.10].

20. Respondent is a "generator" of hazardous waste, as that term is defined under Minn. R. 7045.0020 subpart 31 [40 C.F.R. § 260.10].

21. For the years 2014 to 2018, Respondent generated 1,000 kilograms or greater of hazardous waste in a calendar month of each year (qualifying it as a "Large Quantity

Generator”), which it shipped off-site to a treatment, storage or disposal facility within the United States.

22. On July 24, 2017, U.S. EPA sent to Respondent a Notice of Potential RCRA Violations and Opportunity for Settlement (hereinafter “Notice Letter”).

23. The Notice Letter identified potential RCRA violations and areas of concern at the facility.

24. Respondent then engaged with U.S. EPA to assess and evaluate the facility’s compliance, in part, by voluntarily providing all necessary information to U.S. EPA. Respondent has certified that it corrected the violations alleged in the Notice Letter.

### **Alleged Violations**

#### **Count I: Operating as Storage Facility without a RCRA Permit or Interim Status**

25. Complainant incorporates paragraphs 1 through 24 of this CAFO as though set forth in this paragraph.

26. Pursuant to Minn. R. 7001.0020(B) and 7001.0030 and Section 3005 of RCRA, 42 U.S.C. § 6925(a), the treatment, storage, or disposal of hazardous waste by any person without a RCRA permit or interim status is prohibited.

27. For calendar years 2014 to 2018, Respondent did not have a RCRA permit or interim status to treat, store, or dispose of hazardous waste at its facility.

28. Pursuant to Minn. R. 7045.0292, a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided it meets the conditions specified under Minn. R. 7045.0292 subpart 1.

29. Pursuant to Minn. R. 7045.0292 subpart 1, some permit exemption conditions are also requirements for owners or operators under, inter alia, Minn. R. 7045.0572 (“Contingency

Plan”), Minn. R. 7045.0558 (“Personnel Training”), and Minn. R. 7045.0626 (“Use and Management of Containers”).

30. Respondent failed to meet conditions as specified below during the relevant time period, calendar years 2014 to 2018.

#### Container Labeling

31. Pursuant to Minn. R. 7045.0292 subpart 1.C., a large quantity generator must clearly label containers of hazardous waste with accumulation start dates visibly for inspection.

32. Pursuant to Minn. R. 7045.0292 subpart 1.F., a large quantity generator must label containers of hazardous waste with the words “Hazardous Waste” and a description that clearly identifies their contents to employees and emergency personnel.

33. At all relevant times, Respondent failed to label its containers of hazardous waste in the manner prescribed in paragraphs 31 and 32, above.

#### Personnel Training

34. Pursuant to Minn. R. 7045.0292 subpart 1.G., and Minn. R. 7045.0558, facility personnel must be trained to perform their hazardous waste management duties in a way that ensures the facility's compliance with the requirements of this part, including implementation of the facility's contingency plan. Facility personnel must take part in an annual review of this training.

35. At all relevant times, Respondent failed to properly document its compliance with initial and annual training for facility personnel whose job positions included hazardous waste management duties in hazardous waste management procedures or in contingency plan implementation.

### Contingency Plan

36. Pursuant to Minn. R. 7045.0292 subpart 1.G. and Minn. R. 7045.0572 a large quantity generator must have a contingency plan for the facility, designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

37. At all relevant times, Respondent's contingency plan was not complete.

### Weekly Inspections

38. Pursuant to Minn. R. 7045.0292 subpart 1.B. and Minn. R. 7045.0626 subpart 5, a large quantity generator must inspect hazardous waste containers and areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and shall keep a written record of the dates and findings of these inspections.

39. At all relevant times, Respondent was not properly documenting that it was conducting weekly inspections of hazardous waste containers and the areas where the containers are stored.

### **Count II: Documentation of Waste Determinations**

40. Complainant incorporates paragraphs 1 through 24 of this CAFO as though set forth in this paragraph.

41. Pursuant to Minn. R. 7045.0294 subpart 3, a generator must keep records of any test results, waste analyses, or other determinations made in accordance with part 7045.0214 ("Evaluation of Wastes") for at least three years from the date that the waste was last sent to an on-site or off-site treatment, storage, or disposal facility.

42. At all relevant times, Respondent did not maintain waste determination

documentation for floor sweepings and paint-related wastes in violation of Minn. R. 7045.0294 subpart 3.

**Count III: Notification of Change of Hazardous Waste Activity**

43. Complainant incorporates paragraphs 1 through 24 of this CAFO as though set forth in this paragraph.

44. Pursuant to Minn. R. 7045.0206 [40 C.F.R. § 262.10(b)], a generator is a large quantity generator if it generates 1,000 kilograms or more of hazardous waste in a calendar month. This rule also defines small quantity generators and very small quantity generators. It requires small quantity generators and very small quantity generators to notify the Commissioner and take certain steps if they exceed the applicable quantity limitations. Consequently, this rule requires all generators to determine the quantity of hazardous waste generated per month to allow the generator to determine the applicability of the provisions of Minn. R. 7045.0292 that are dependent on the quantity of hazardous waste generated per month.

45. Pursuant to Minn. R. 7045.0221 and Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file with an authorized State a notification including (or if necessary a subsequent notification) the types of wastes handled and the type of hazardous waste activity (*e.g.*, change to Large Quantity Generator status).

46. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's hazardous waste activity changes to Large Quantity Generator status.

47. For the 2014-2016 calendar years, Respondent notified the Commissioner that it was a Small Quantity Generator. Respondent corrected its generator status in 2018 notifying the Commissioner that it was generating amounts of hazardous waste consistent with being a Large



Quantity Generator. The years in which Respondent did not notify the Commissioner that it was a Large Quantity Generator are violations of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Civil Penalty**

48. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$47,800. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$47,800 civil penalty for the RCRA violations by:

*For checks sent by regular U.S. Postal Service mail*, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

*For checks sent by express mail*, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CAFO.

*For electronic funds transfer*, sending funds electronically, payable to “Treasurer, United States of America,” and to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

50. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Brenda Whitney (LR-17J)  
Land and Chemicals Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Richard Clarizio (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

53. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

54. Respondent certifies that it is complying fully with applicable requirements of RCRA, 42 U.S.C. §§ 6901 – 6939(e), the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized Minnesota corollaries to the federal regulations.

55. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [clarizio.richard@epa.gov](mailto:clarizio.richard@epa.gov) (for Complainant), and [mduffy@mmblawfirm.com](mailto:mduffy@mmblawfirm.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

56. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

57. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

59. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA

Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy  
(December 2003).

60. The terms of this CAFO bind Respondent, its successors, and assigns.

61. Each person signing this agreement certifies that he or she has the authority to sign  
for the party whom he or she represents and to bind that party to its terms.

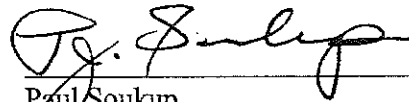
62. Each party agrees to bear its own costs and attorney's fees in this action.

63. This CAFO constitutes the entire agreement between the parties.

64. Respondent consents to the payment of the civil penalty of \$47,800 and the terms of  
this CAFO.

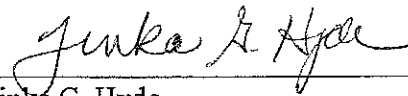
**Warrior Mfg., LLC, Respondent**

2/19/19  
Date

  
Paul Soukup  
Chief Executive Officer  
Warrior Mfg., LLC

**United States Environmental Protection Agency, Complainant**

2-21-19  
Date

  
Tinka G. Hyde  
Director  
Land and Chemicals Division

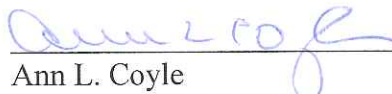
**In the Matter of:**  
**Warrior Mfg., LLC**  
**Docket No. RCRA-05-2019-0007**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/26/19

\_\_\_\_\_  
Date



\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

In the Matter of: **Warrior Mfg., LLC**  
RCRA Facility No.: **MNS000130104**  
Docket No.: **RCRA-05-2019-0007**

**Certificate of Service**

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, Docket Number **RCRA-05-2019-0007**, which was filed on February 26, 2019, in the following manner to the addresses:

Copy by e-mail to

Respondent:

**(Authorized in CAFO)**

Matthew Duffy

[mduffy@mdblawnfirm.com](mailto:mduffy@mdblawnfirm.com)

7760 France Avenue

Suite 700

Minneapolis, Minnesota 55435

Copy by e-mail to

Attorney for Complainant:

Richard Clarizio

[clarizio.richard@epa.gov](mailto:clarizio.richard@epa.gov)

Copy by e-mail to

Case Assignee:

Brenda Whitney

[whitney.brenda@epa.gov](mailto:whitney.brenda@epa.gov)

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle

[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

February 26, 2019  
Date



LaDawn Whitehead

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5