

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103

U.S. EPA-REGION 3-RHC
FILED-5SEP2019PM4:06

In the Matter of: :
: :
East Penn Manufacturing Company, Inc. : U.S. EPA Docket No. RCRA-03-2019-0126
102 Deka Road : :
Lyon Station, Pennsylvania 19536, : Proceeding under Section 3008(a) and (g) of the
Respondent. : Resource Conservation and Recovery Act
: (RCRA), as amended,
: 42 U.S.C. § 6928(a) and (g)
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CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and East Penn Manufacturing Company, Inc. (“Respondent”), (collectively the “Parties”), pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and 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 C.F.R. Part 22.
2. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA, and authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
3. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under

Subtitle C of RCRA, as amended, 42 U.S.C. §§ 6901 *et seq.*, and the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270, for the violations alleged herein.

4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

5. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraphs 1 to 4, above.
6. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4) and RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).
7. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated February 15, 2019, EPA notified the Pennsylvania Department of Environmental Protection (PADEP) of EPA's intent to commence this administrative action against Respondent in response to violations of RCRA Subtitle C that are alleged herein.

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
10. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
12. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
13. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania. Respondent is a 'person' as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10, and is subject to the assessment of civil penalties for the violations alleged herein. Respondent is and, at all times relevant to the violations alleged herein, was the owner and operator of a facility located at 102 Deka Road, Lyon Station, PA 19536 (hereinafter "the Facility").
15. The Facility referred to in Paragraph 14, above, including all of its associated equipment and structures, is a manufacturing facility located at 102 Deka Road, Lyon Station, PA 19536.
16. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, the "operator" and the "owner" of the Facility described in paragraph 15, as those terms are defined in 40 C.F.R. § 260.10.
17. On or before August 18, 1980, Respondent submitted a Notification of Hazardous Waste Activity ("Notification") for the Facility to the PADEP and to the EPA, Region III, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying the Facility as a generator of hazardous waste. Subsequently, the Facility was assigned RCRA ID Number PAD002330165.
18. Respondent is a generator of Spent Lead Acid Batteries (SLABs) which are "solid waste" and "hazardous waste" as those terms are defined at 40 C.F.R. §§ 260.10, 261.2 and 261.3.
19. Pursuant to 40 C.F.R. § 261.24, Respondent's SLABs exhibit the toxicity characteristic for lead, EPA Hazardous Waste No. D008, and also exhibits the D002 corrosivity characteristic.
20. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, an "exporter" of SLABs as that term is defined in 40 C.F.R. § 262.81.
21. SLABs are subject to the SLAB management standards of 40 C.F.R. Part 266, Subpart G and are subject to 40 C.F.R. § 262, Subpart H, the "Transboundary Movements of Hazardous Waste for Recovery or Disposal," which contains specific requirements for exports of hazardous waste under 40 C.F.R. § 262.83.
22. From March 22, 2018 through May 4, 2018, Respondent exported 14 shipments of SLABs from its Lyon Station, PA facility to Terrapure of Canada ("Terrapure"). Terrapure is an industrial waste management and environmental services company, which also has a smelter. Terrapure has an integrated network of 70 facilities across

Canada. The final destination facility for the SLABs is Revolution VSC LP (“Terrapure”) and is located at 1200 Garnier, Ville Ste-Catherine, Quebec, Canada J5C1B4.

23. On July 16, 2019, EPA sent a Request to Show Cause (“Show Cause letter”) to Respondent advising it of EPA’s preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s compliance with the export requirements for SLABs transferred from the Facility for transboundary movement from the United States to Canada.
24. Based upon EPA’s findings during an investigative process utilizing two Information Requests dated July 10, 2018 and September 21, 2018, and Respondent’s subsequent responses on August 8, 2018 and November 6, 2018 respectively, which provided additional information, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6935, and 40 CFR § 262.83, for exports of hazardous waste, in the form of SLABs, from the Facility.

Count I

Failure to Submit Electronic Export Information (EEI) for Shipments of Spent Lead Acid Batteries (SLABs) Prior to Export

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.
26. RCRA Subtitle C, 40 C.F.R. § 262.83, “Exports of hazardous waste,” item (a)(6)(ii), General export requirements, states the following:

“(6) The exporter or a U.S. authorized agent:

(ii) For shipments initiated on or after the AES filing compliance date, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

- (A) EPA license code;
- (B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);
- (C) EPA consent number for each hazardous waste;
- (D) Country of ultimate destination code per 15 CFR 30.6(a)(5);
- (E) Date of export per 15 CFR 30.6(a)(2);
- (F) RCRA hazardous waste manifest tracking number, if required;
- (G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value

for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or
(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.”

27. As an exporter of SLABs, Respondent was required to submit EEI for each of 14 shipments of SLABs to the AES prior to each shipment of SLABs from the United States to Canada.
28. Prior to the 14 export shipments of SLABs, Respondent failed to submit EEI to the AES, as required under 40 C.F.R. § 262.83(a)(6)(ii).
29. As an exporter of SLABs, Respondent violated 40 C.F.R. § 262.83(a)(6)(ii) for its failure to submit EEI for 14 shipments of SLABs prior to export on the following dates with shipment-specific information:

(See Summary Chart of Exports on next page.)

**Summary of East Penn Manufacturing Company, Inc.
 Exports of Spent Lead-Acid Batteries ("SLABs")**

Date of Export	EPA Consent Number	Manifest Number	Units (# of SLABs)	Weight (kg)
04/28/18	018648E18001	9774276-1	830	18261
04/13/18	018648E18001	9782808-1	858	18883
04/04/18	018648E18001	9782602-8	888	19527
04/25/18	018648E18001	9774258-9	878	19305
04/11/18	018648E18001	9779175-0	824	18126
04/02/18	018648E18001	9782607-7	789	17364
05/04/18	018648E18001	9774341-3	857	18847
04/20/18	018648E18001	9774230-8	864	19015
04/06/18	018648E18001	9782738-0	879	19341
03/26/18	018648E18001	9782570-7	842	18534
05/02/18	018648E18001	9774306-6	840	18480
04/18/18	018648E18001	9774215-9	921	20253
04/04/18	018648E18001	9782634-1	864	19006
03/22/18	018648E18001	9779484-6	732	16112

30. Respondent is therefore subject to civil penalties under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for violation of 40 C.F.R. § 262.83(a)(6)(ii) of RCRA Subtitle C.

CIVIL PENALTY

31. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TWENTY-EIGHT THOUSAND dollars (\$28,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

32. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in the Resource Conservation and Recovery Act (RCRA), Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's RCRA CIVIL PENALTY POLICY, which reflects the statutory penalty criteria and factors set forth at RCRA, Section 3008, 42 U.S.C. § 6928, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

33. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified

check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket No. RCRA-03-2019-0126;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Daniel T. Gallo
Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
gallo.dan@epa.gov

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
35. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

36. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
37. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
38. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
39. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

40. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
41. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

42. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

43. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the Resource Conservation and Recovery Act, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

44. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

EXECUTION /PARTIES BOUND

45. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

46. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

47. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations

alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: East Penn Manufacturing Company, Inc.
EPA Docket No. RCRA-03-2019-0126

For Respondent: East Penn Manufacturing Company, Inc.

Date: 8/28/19


By: Troy A. Greiss
Troy A. Greiss MS, CIH, CSP
Vice President, EHS & Regulatory Affairs

In Re: East Penn Manufacturing Company, Inc.
EPA Docket No. RCRA-03-2019-0126

For the Complainant:


After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: SEP 5 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 9/4/19

By: 
Daniel T. Gallo
Assistant Regional Counsel
U.S. EPA – Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION III

U.S. EPA-REGION 3-RHC
FILED-5SEP2019PM4:06

In the Matter of:

East Penn Manufacturing Company, Inc.
102 Deka Road
Lyon Station, Pennsylvania 19536,

EPA Docket No. RCRA-03-2019-0126

Respondent.

FINAL ORDER

Proceeding under Section 3008(a) and (g)
of the Resource Conservation and
Recovery Act (RCRA), as amended,
42 U.S.C. § 6928(a) and (g)

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, East Penn Manufacturing Company, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with 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 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.


Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***TWENTY-EIGHT THOUSAND DOLLARS (\$28,000.00)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of RCRA Subtitle C and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 5, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

In Re: East Penn Manufacturing Company, Inc.
EPA Docket No. RCRA-03-2019-0126

In the Matter of:

East Penn Manufacturing Company, Inc.
102 Deka Road
Lyon Station, Pennsylvania 19535,

Respondent.

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: **42 U.S.C. § 6928(a) and (g)**
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U.S. EPA-REGION 3-RHC
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CERTIFICATE OF SERVICE

I certify that on SEP 05 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Next Day Delivery to:

Troy A. Greiss MS, CIH, CSP
Vice President
EHS & Regulatory Affairs
East Penn Manufacturing Company, Inc.
102 Deka Road
Lyon Station, Pennsylvania 19536

Mr. Thomas E. Hogan, Attorney
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W., Suite 1100
Washington, DC 20036-5403

Copy served via Hand Delivery or Inter-Office Mail to:

Daniel T. Gallo, Assistant Regional Counsel
ORC – 3RC40
U.S. EPA – Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: SEP 05 2019



Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

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