

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

Received by
EPA Region 7
Hearing Clerk

In the Matter of:)
)
Viega LLC,) **Docket No. RCRA-07-2021-0093**
)
Respondent.)
)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Viega LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Kansas Statute Annotated 65-3431, Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and Kansas regulations which incorporate by reference certain the federal regulations for the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

Parties

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Viega LLC, a company authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3002 and 3005 of RCRA, 42 U.S.C. §§ 6922 and 6925 to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 262.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

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

9. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” 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.

10. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

11. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

12. “Solid waste” is defined at 40 C.F.R. § 261.2.

13. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

14. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

15. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

16. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter “K.A.R.”). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

17. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$76,764 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

18. Respondent is a company and authorized to conduct business within the State of Kansas. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. Respondent owns and operates a facility located at 2211 Viega Avenue in McPherson, Kansas (“facility”). Respondent’s facility manufactures a variety of piping and fittings for commercial and residential plumbing applications.

20. On or about July 6, 2020, Respondent first notified EPA and the Kansas Department of Health and Environment (“KDHE”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a large quantity generator (“LQG”). Prior to July 6, 2020, Respondent had notified KDHE as early as 2009 and up to and including March 2, 2020, that it was operating as a conditionally exempt small quantity generator (“CESQG”) of hazardous waste.

21. On or about May 6, 2020, EPA issued a Request for Information (“RFI”) regarding the hazardous waste management practices at Respondent’s facility. Based upon Respondent’s RFI response dated July 31, 2020 (“RFI response”), Respondent began operating as a LQG of hazardous waste beginning in January 2019.

22. Pursuant to Respondent’s RFI response, Respondent generates various streams of solid and hazardous waste including, but not limited to, chromium wastewater, which is a D007 characteristic hazardous waste. Respondent stores the chromium wastewater in tanks.

23. Respondent has been assigned the following EPA ID Number: KSR000508200.

Violations

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

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

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

26. Section 3005 of RCRA, 42 U.S.C. § 6925, Kansas Statute Annotated 65-3431, and the regulations at 40 C.F.R. Part 270 and K.A.R. 28-31-270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

27. At all relevant time periods, Respondent did not have a permit or interim status.

Generator Requirements

28. The regulations at 40 C.F.R. § 262.34(a), incorporated by K.A.R. 28-31-262(a), state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to have a complete contingency plan

29. To be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(4), incorporated by K.A.R. 28-31-262(a), require in part that the generator comply with Subparts C and D in 40 C.F.R. Part 265 and 40 C.F.R. § 265.16.

30. Pursuant to 40 C.F.R. § 265.51, as found in 40 C.F.R. Part 265, Subpart D, the owner or operator 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 and containing the contents outlined in 40 C.F.R. § 265.52.

31. At the time EPA issued the IRL, the facility did not have a contingency plan pursuant to 40 C.F.R. § 265.51 containing the contents required by 40 C.F.R. § 265.52.

Failure to perform annual hazardous waste training

32. To be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(4), incorporated by K.A.R. 28-31-262(a), require in part that the generator comply with Subparts C and D in 40 C.F.R. Part 265 and 40 C.F.R. § 265.16.

33. Pursuant to 40 C.F.R. § 265.16(c), facility personnel must take part in an annual review of the initial RCRA training program required under 40 C.F.R. § 265.16(a).

34. According to Respondent's IRL response, Respondent failed to perform the annual review of the initial RCRA training program required under 40 C.F.R. § 265.16(a) in 2019.

Failure to make arrangements with emergency authorities

35. To be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(4), incorporated by K.A.R. 28-31-262(a), require in part that the generator comply with Subparts C and D in 40 C.F.R. Part 265 and 40 C.F.R. § 265.16.

36. Pursuant to 40 C.F.R. § 265.37, as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must make arrangements with local authorities including police, fire departments, and emergency response teams to familiarize them with the facility and the hazardous waste generated at the facility and the associated hazards.

37. According to Respondent's IRL response, Respondent failed to make arrangements with police, fire departments, and emergency response teams to familiarize them with the facility and the hazardous waste generated at the facility and the associated hazards, following the change in the facility's generator status from a CESQG to an LQG, until July 27, 2020.

Failure to document daily inspections of hazardous waste tanks

38. To be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a)(1)(ii), incorporated by K.A.R. 28-31-262(a), require in part that a generator that places hazardous waste in tanks comply with Subpart J of 40 C.F.R. Part 265, except 40 C.F.R. §§ 265.197(c) and 265.200.

39. Pursuant to 40 C.F.R. § 265.195(g), as found in 40 C.F.R. Part 265, Subpart J, the owner or operator must document daily inspections of each hazardous waste tank.

40. According to Respondent's IRL response, Respondent failed to document daily inspections of the tanks where the hazardous chromium wastewater was placed prior to April 2020.

Accumulation of hazardous waste beyond 90 days

41. To be conditionally exempt from hazardous waste storage permitting and operating requirements, the regulations at 40 C.F.R. § 262.34(a), incorporated by K.A.R. 28-31-262(a), require, in part, that a generator may not accumulate hazardous waste on-site for longer than 90 days without a permit.

42. According to Respondent's hazardous waste manifests, Respondent accumulated hazardous chromium wastewater beyond 90 days on two separate occasions in 2019.

43. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 29 through 42 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and Kansas Statute Annotated 65-3431.

Count 2

Failure to timely notify as a large quantity generator

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

45. Pursuant to K.A.R. 28-31-262a(b), each generator of hazardous waste, except CESQGs, shall submit a report to KDHE that indicates whether the generator is an LQG, a small quantity generator, or a Kansas small quantity generator. Each LQG shall submit the report on or before March 1 of each year that a biennial report is not required (odd numbered years).

46. Based upon Respondent's RFI response, Respondent began operating as an LQG of hazardous waste beginning in January 2019, and therefore, Respondent's report was due on March 1, 2019.

47. Respondent failed to report to KDHE that it was operating as an LQG until July 6, 2020.

48. Respondent's failure to report its generator status by March 1, 2019 is a violation of K.A.R. 28-31-262a(b).

Failure to timely file a biennial report

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

50. Pursuant to 40 C.F.R. § 262.41(a), incorporated by K.A.R. 28-31-262(a), each generator who is an LQG for at least one month of an odd-number year who ships any hazardous waste off-site to a treatment, storage or disposal facility must complete and submit a biennial report by March 1 of the following even-numbered year and must cover generator activities during the previous year.

51. Based upon Respondent's RFI response, Respondent began operating as a LQG of hazardous waste beginning in January 2019, and therefore, Respondent's biennial report was due on March 1, 2020.

52. Respondent failed to complete and submit its biennial report until August 1, 2020.

53. Respondent's failure to complete a biennial report by March 1, 2020, is a violation of 40 C.F.R. § 262.41(a).

CONSENT AGREEMENT

54. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

55. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

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

58. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *amy.wachs@huschblackwell.com*

Penalty Payment

59. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of One Hundred Five Thousand Four Hundred Twenty-One Dollars (\$105,421).

60. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

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

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Britt Bieri, Attorney
bieri.britt@epa.gov

62. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

63. Full payment of the penalty proposed in this Consent Agreement shall only

resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

64. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

65. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

66. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

67. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty-One Eight Hundred Twenty Dollars (\$61,820) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

68. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

69. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

70. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

71. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

72. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

73. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

74. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent / Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

75. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.


76. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9-30-21

Date


for Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division


Date

Britt Bieri
Office of Regional Counsel

RESPONDENT:

VIEGA LLC

9/29/21
Date



Signature

Eric Wickner

Printed Name

Sr. Director, Manufacturing

Title

FINAL ORDER

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

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

Copy via Email to Complainant:

bieri.britt@epa.gov

Copy via Email to Respondent:

amy.wachs@huschblackwell.com

Copy via Email to the State of Kansas:

Julie Coleman, Director
Bureau of Waste Management
Kansas Department of Health and Environment
julie.coleman@ks.gov

Ken Powell
Compliance and Enforcement, Waste Reduction, and Assistance Section
Kansas Department of Health and Environment
ken.powell@ks.gov

Dated this _____ day of _____, _____.

Signed