



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

June 30, 2020
12:39 PM

Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: RCRA-08-2020-0006

IN THE MATTER OF:

JOAQUIN MFG. CORP.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF JUNE, 2020.

KATHERIN
HALL

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HALL
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Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)		
Joaquin Mfg. Corp.,)	Docket No. RCRA-08-2020-0006	
6900 Elm Street,)		June 30, 2020
Commerce City, CO 80022)		12:39 PM
Respondent.)		Received by
)		EPA Region VIII
)	CONSENT AGREEMENT	Hearing Clerk
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I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.
2. Joaquin Mfg. Corp., a Colorado corporation, (Respondent) owns and operates the 6900 Elm Street Facility (Facility) located in Commerce City, Adams County, Colorado.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 3008 of the Solid Waste Disposal Act (Act), as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928 (RCRA). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. The State of Colorado (State) has been authorized under section 3006(b) of the Act, 42 U.S.C. § 6926(b), to administer a hazardous waste program in lieu of the federal hazardous waste program in Colorado. The Colorado Department of Public Health and Environment (CDPHE) is the state agency charged with implementing the state and federal hazardous waste programs in Colorado.

8. The requirements of the State's authorized program are found at 6 Code of Colorado Regulations (CCR) 1007-3. Citations herein, therefore, are to the CCR.
9. EPA retains jurisdiction and authority to initiate an enforcement action in the State under section 3008 of the Act. 42 U.S.C. § 6928. *See* section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2).
10. EPA has given notice of this action to CDPHE as required by section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2).

IV. ALLEGED FACTS

11. Respondent is a "person" as defined in 6 CCR 1007-3 § 260.10.
12. Respondent is the "owner" and "operator" of a "facility"—the Facility located at 6900 Elm Street, Commerce City, Colorado—as those terms are defined in 6 CCR 1007-3 § 260.10.
13. Respondent manufactures custom electronic equipment enclosures at the Facility.
14. Respondent is a "generator" of "hazardous waste," as those terms are defined in 6 CCR 1007-3 § 260.10.
15. On June 12, 2018, inspectors with EPA conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility. EPA's findings were documented in a report sent to Respondent on October 1, 2018.
16. EPA's observations and findings from the June 12, 2018 inspection included:
 - a. Two unlabeled 55-gallon drums containing hazardous paint waste in the south section of the storage yard. One drum was open and the other was improperly closed with a rag placed in the drum bung hole. Neither drum was marked with an accumulation start date;
 - b. Six unlabeled, 55-gallon drums containing hazardous paint waste. None of the six drums were marked with an accumulation start date;
 - c. In total, the drums referenced in paragraphs 16.a and 16.b contained approximately 1600 kg of hazardous waste;
 - d. One poly tote containing used oil that was not labeled with the words "Used Oil" in the north section of the storage yard; and
 - e. Respondent had not notified CDPHE that Respondent was a hazardous waste generator.
17. On November 7, 2018, Respondent notified CDPHE that it is a Very Small Quantity Generator of hazardous waste at the Facility.
18. On June 12, 2018, Respondent provided EPA photographs demonstrating:
 - a. all eight containers of hazardous waste paint were properly closed; and
 - b. the plastic tote containing used oil was labeled with the words "Used Oil".

19. On July 24, 2018, Respondent provided EPA a copy of a hazardous waste manifest (tracking number 001197248VES) demonstrating all the hazardous waste referenced observed during the June 12, 2018 inspection was shipped for disposal, as well as the associated waste profiles.
20. On July 10, 2019, Respondent submitted a letter to EPA describing steps taken to return to compliance and a hazardous waste management plan, which indicate Respondent had been following the requirements for small quantity generators of hazardous waste.
21. On May 18, 2020, Respondent notified CDPHE of a change in status to a small quantity generator of hazardous waste.

V. ALLEGED VIOLATIONS OF LAW

22. Respondent failed to notify CDPHE that it was a generator of hazardous waste, in violation of 6 CCR 1007-3 § 262.12(a).
23. Respondent failed to meet the conditions for exemption from being a treatment, storage, and disposal facility by:
 - a. accumulating hazardous waste at the Facility for longer than 180 days, 6 CCR 1007-3 § 262.34(d); and
 - b. failing to ensure containers used to store hazardous wastes were labeled, closed, and marked with the start date of the accumulation period, in violation of 6 CCR 1007-3 § 262.34(d)(2), (4).

Therefore, Respondent violated section 3005(a) of the Act, 42 U.S.C. § 6925(a), by operating a facility for the treatment, storage, or disposal of hazardous waste without authorization.

24. Respondent failed to ensure containers used to store used oil at the Facility were labeled or clearly marked with the words “Used Oil”, in violation of 6 CCR 1007-3 § 279.22(c).

VI. TERMS OF CONSENT AGREEMENT

25. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the factual allegations stated in section IV of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;
 - e. waives any right to contest any final order approving this Agreement; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

26. Section 3008(a) of the Act authorizes EPA to assess a civil penalty in this matter.
27. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations and any good faith efforts to comply with applicable requirements, in accordance with section 3008(a).
28. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 27 above, EPA has determined a civil penalty of \$13,600 is appropriate to settle this matter.
29. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$13,600 within 90 calendar days of the Effective Date of this Agreement, based on Respondent's certified statement that COVID-19 negatively impacted its financial health. Any false statement made in the certified statement may subject Respondent to additional penalties and void the release from liability in paragraph 35;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Kristin McNeill and Matt Castelli at mceill.kristin@epa.gov and castelli.matthew@epa.gov ("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).
30. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
31. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

32. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
33. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
34. Except as qualified by paragraph 29, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

35. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
36. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
37. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$60,039 per day per violation, or both, as provided in section 3008 of the Act and adjusted for inflation pursuant to 40 C.F.R. part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
38. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, 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, or determination of, any issue related to any federal, state, or local permit.
39. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
40. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.
41. Respondent and Complainant consent to electronic service this Agreement and the Final Order by e-mail at the following email addresses: waynef@joaquinmc.com and castelli.matthew@epa.gov.

VIII. EFFECTIVE DATE

42. This Agreement shall become effective on the date the final order is filed by the hearing clerk.

Consent Agreement In the Matter of Joaquin Mfg. Corp.
ECN: 500.0014.2019_Joaquin

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

**SUZANNE
BOHAN**

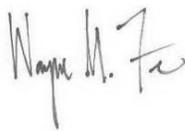
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By: _____

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**JOAQUIN MFG. CORP.,
Respondent.**



Date: 6/23/20

By: _____

Mr. Wayne Fee, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **JOAQUIN MFG. CORP.; DOCKET NO.: RCRA-08-2020-0006** was filed with the Regional Hearing Clerk on June 30, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Matt Castelli, Enforcement Attorney, and sent via certified receipt email on June 30, 2020, to:

Respondent

Wayne Fee
Joaquin Mfg. Corp.
waynef@joaquinmc.com

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 30, 2020

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Melissa Haniewicz
Regional Hearing Clerk