

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2018 SEP 11 PM 3:42

In the Matter of)
)
Jacam Manufacturing 2013, LLC) Docket No. CAA-07-2018-0219
Jacam Chemical Company 2013, LLC)
Respondents.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Jacam Manufacturing 2013, LLC and Jacam Chemical Company 2013, LLC (collectively, Respondents or Jacam) 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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondents have violated the General Duty Clause set forth in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.
4. Respondents are Jacam Manufacturing 2013, LLC and Jacam Chemical Company 2013, LLC, limited liability companies in good standing under the laws of the state of Delaware and doing business in the state of Kansas, which own and operate the Organoclay facility located at 1656 Avenue Q, Sterling, Kansas 67579 (the Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the General Duty Clause, the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 *et. seq.* to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by 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 per day for violations that occurred from January 12, 2009, through November 2, 2015; to \$45,268 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$46,192 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

Definitions

8. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

9. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

10. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

EPA's General Factual Allegations

11. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

12. Jacam processed, handled and stored isopropyl alcohol at the Facility.

13. Isopropanol (isopropyl alcohol, CAS #67-63-0) is a highly flammable liquid and extremely hazardous substance.

14. On or about April 13, 2017 there was a fire at the Facility resulting in an accidental release.

15. Between May and July 2017, EPA requested and Jacam provided documents and information related to the Facility including: Standard Operating Procedures for starting the process; Hazard Review for the process; incident reports; training records for associated employees and operations; and monitoring data.

16. As a result of the EPA investigation of the April 13, 2017 fire, Complainant has determined that violations of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) occurred at the Facility.

EPA's Allegations of Violation

17. Complainant hereby states and alleges that Respondents have violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

18. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

19. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owner or operator of a stationary source producing, processing, handling or storing an extremely hazardous substance has a general duty to identify hazards which may result from an accidental release using appropriate hazard assessment techniques.

20. The EPA investigation revealed that Respondents did not adequately identify hazards which may result from an accidental release, including failure to complete an adequate hazard assessment and failure to complete an adequate hazard review of the process and the chemicals used in the process. Specifically, Respondents did not adequately identify the hazards associated with utilizing an open flame in close proximity to a combustible liquid.

21. Respondents' failure to identify hazards which may result from an accidental release is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2

22. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

23. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owner or operator of a stationary source producing, processing, handling or storing an extremely hazardous substance has a general duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.

24. The EPA investigation revealed that Respondents did not adequately design and maintain a safe facility taking such steps as are necessary to prevent releases, including failure to complete an adequate process hazard analysis and failure to update standard operating procedures to reflect a major change in the process and potential consequences of deviations and hazards of using ignition sources near flammable and combustible chemicals.

25. Respondents' failure to design and maintain a safe facility taking such steps as are necessary to prevent releases is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 3

26. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

27. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owner or operator of a stationary source producing, processing, handling or storing an extremely hazardous substance has a general duty to minimize the consequences of accidental releases which do occur.

28. The EPA investigation revealed that Respondents did not minimize the consequences of accidental releases which occur, including failure to take adequate mitigation steps necessary to minimize the consequences of the April 13, 2017 release, such as completing an offsite consequence analysis and utilizing fire suppression mechanisms to prevent the spread of the fire.

29. Respondents' failure to minimize the consequences of an accidental release is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

CONSENT AGREEMENT

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

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

31. Respondents consent to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the SEP described below.

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

Penalty Payment

33. Respondents agree that, in settlement of the claims alleged herein, Respondents shall pay a civil penalty of Twenty-Four Thousand Dollars (\$24,000) as set forth below, and shall perform a Supplemental Environmental Project (SEP) as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is One Hundred Thousand Dollars (\$100,000). The SEP is further described below.

34. Respondents shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondents 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>.

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

36. Respondents understand that their 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(b)(1). 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).

Supplemental Environmental Project

37. In response to the violations of the CAA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondents shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

38. Respondents shall complete the following SEP: Jacam has elected to enhance the local first responders' ability to adequately respond to emergencies. Specifically, Jacam will utilize a vendor to purchase response equipment for the Rice County Rural Fire District No. 1:

Respondents shall at a minimum, purchase the following response equipment:

- (a) Enclosed portable foam trailer for structural, commercial and wildland firefighting;
- (b) Totes of firefighting foam;
- (c) Remote nozzles for the 6x6 fleet; and
- (d) Remote activated spray bars for the 6x6 fleet and the 4x4 fleet.

If funding allows, after purchase of the equipment above, Respondents may also purchase the following response equipment:

- (a) NFPA approved wildland fire gear including fire resistant pants, shirts, coats and coveralls;
- (b) NFPA approved structural fire gear including "turnout" or "bunker" coat and pant combinations;
- (c) Personal protection equipment including filtered grass masks, gloves and boots specified for wildland fires, helmet lights, hand held flashlights, traffic control lights, scene lighting, and self-controlled breathing apparatus units for structural fires;
- (d) Replacement pumps for the 4x4 fleet;
- (e) Chain saws for the wildland fire vehicles;
- (f) Nozzles, hoses and fittings for interoperability with outside mutual aid agencies and business that assist Rice County Rural Fire District No. 1 in responding to emergencies; and
- (g) Training on any new response equipment listed herein as provided by a third-party vendor.

39. Respondents agree that the SEP shall be completed within ninety (90) days of the Effective Date of this Consent Agreement and Final Order.

40. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

41. Within one hundred eighty (180) days of the Effective Date of this Consent Agreement and Final Order, Respondents shall submit a SEP Completion Report to the EPA contact identified below. The SEP Completion Report shall be subject to EPA review and approval as provided in below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented;
- (b) Detailed itemization of the costs associated with completing the SEP;
- (c) Description of any problems encountered in purchasing the equipment and the solution thereto;
- (d) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and
- (e) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

42. In itemizing its costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

43. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

44. The SEP Completion Report shall be submitted on or before the due date specified above to:

Krystal Stotts
U.S. Environmental Protection Agency, Region 7
Chemical and Oil Release Prevention Branch
Air and Waste Management Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

45. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP

Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

46. Any public statement, oral or written, in print, film, internet, or other media, made by Respondents making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

47. With regard to the SEP, Respondents certify the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondents in good faith estimate that the cost to implement the SEP is One Hundred Thousand Dollars (\$100,000);
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondents are not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondents have not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondents will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondents agree that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- (g) Respondents are not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 38.
- (h) Respondents have inquired of the SEP recipient, Rice County Rural Fire District No. 1, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Rice County Rural Fire District No. 1 that it is not party to such a transaction.

48. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.
- (a) In the event Respondents fail to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondents shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondents shall pay a stipulated penalty to the United States in the amount of One Hundred Sixteen Thousand Two Hundred Twenty-Five Dollars (\$116,225), minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondents shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
 - iii. For failure to submit the SEP Completion Report, Respondents shall pay a stipulated penalty in the amount of Two Hundred Fifty Dollars (\$250) for each day after the report was originally due until the report is submitted.
 - (b) The determinations of whether the SEP has been satisfactorily completed and whether Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - (c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
 - (d) Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 36 herein.
 - (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
 - (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

49. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondents' 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 the CAA or any other applicable law.

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

51. Respondents certify by the signing of this Consent Agreement that, to the best of their knowledge, Respondents' Facility is presently in compliance with all requirements of Section 112(r)(1) of the CAA.

52. 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 other 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 the CAA and regulations promulgated thereunder.

53. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

54. By signing this Consent Agreement, the undersigned representative of Respondents certify 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.

55. 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.

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

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

RESPONDENT:
JACAM MANUFACTURING 2013, LLC
JACAM CHEMICAL COMPANY 2013, LLC

Date: 8/21/18

Vern Disney
Signature

Vern Disney
Name

COO + President
Title

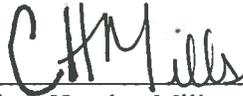
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/27/2018



Mark Smith
Acting Director,
Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 08/22/2018



Clarissa Howley Mills
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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.

Respondents are 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.


~~Karina Borromeo~~ Kathleen Clever
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:

Clarissa Howley Mills
mills.clarissa@epa.gov

Copy via Email to Respondents' Attorney:

Brittany A. Barrientos
brittany.barrientos@stinson.com

Dated this 11 day of September, 2018.


Signed _____